1855.

SUPREME COURT OF THE UNITED STATES.

No. 71.

ROBERT BROCKET AND AL., APPELLANTS,

vs.

WILLIAM BROCKET AND AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR ALEXANDRIA, D. C.

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DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia, for the county of Alexandria, at the court-house, in the town of Alexandria, the 9th day of June, 1843.

Title.

WILLIAM BROCKETT, Annabella Brockett, and Elizabeth Brockett, jr., complainants,
against
ROBERT BROCKETT, Walter Ann Ball and Willaim Ball, her husband, Thomas Wilson, John W. Wilson, George W. Wilson, Walter S. Wilson, George H. Smoot, John Green, Julia Cain, Henry Sims, John H. Brent, Philip Tresler, William Foote, John Devaughn, James Greenwood, John T. Thompson, Edward Claxton, Mary T. Labelle, Elijah Horseman, Joseph Dudley, Daniel L. Riggs, Jane Holley, (a free woman of color,) and Ezra Lunt, defendants. } In Chancery

Be it remembered that heretofore, to wit, at the rules held in the clerk's office of the said court, for the month of May, 1837, came the complainants, by Messrs. Brent & Brent, their solicitors, and filed there a certain bill against the said defendants, which bill is in the words following:

Bill.

To the honorable judges of the circuit court of the District of Columbia, sitting as a court of chancery for the county of Alexandria, in said District.

Humbly complaining, shew unto your honors, Elizabeth Brockett, William Brockett, Annabella Brockett, a minor of tender age, by her next friend the said William Brocket and Elizabeth Brockett, also a minor of tender age, by the said William Brockett, her next friend, all of the county of Washington, in the District of Columbia, that Robert Brockett, senior, of the county of Alexandria, in said District, lately deceased, being in his lifetime, and at the time of his death, seized, possessed of, and interested in, a very considerable estate, both real and personal, in the county of Alexandria, in the District of Columbia, in the State of Virginia, and elsewhere in the United States and in Europe; and, being minded to settle and dispose of the same, did, in his lifetime, (being of sound and disposing mind, memory, and understanding) duly make and publish his last will and testament in his own proper hand-

writing, and "wholly written by himself," as will be shewn to your honors by the production of the same, which is not now in the possession of your oratrixes and orator, but a copy of said last will and testament is hereunto annexed and made part of these complainant's bill, the same as if it had been verbatim transcribed into the same, and is marked A; which said last will and testament your oratrixes and orator charge and state is a good and effectual will and testament for the purpose of conveying and devising all of said estate, both real and personal, as therein stated and directed, according to the law in such case made and provided, and that said deceased so intended the same, and so declared in his lifetime, and during his last sickness of which he died. And your oratrixes and orator further shew unto your honors that, after making the said last will and testament, to wit, on the day of March, in the year of our Lord eighteen hundred and twenty-nine, the said Robert Brockett, sen'r, departed this life without revoking or making any alteration of the same; but, on the contrary, after declaring that the same should stand and be his last will and testament for the purposes therein expressed, seized and possessed as aforesaid, your oratrixes and orator charge and state that, by said last will and testament, as devisees and legatees under the same, each of your oratrixes and your orator were and are entitled to one-fifth part of the whole estate, both real and personal, that is to say: your oratrixes and orator jointly are entitled to the four-fifths of all said estate, (after deducting therefrom the bequest to Walter Ann Brockett, the grand daughter named in the beginning of said last will and testament,) to be divided in manner and form as pointed out in the said last will and testament, and subject to all the conditions and stipulations therein contained; that your oratrixes and orator well hoped that they should have quietly and peaceably held and enjoyed the said estate, real and personal, according to the directions of the said last will and testament, as in all justice and equity they ought to have done; but now, so it is, may it please your honors, that Robert Brockett, junior, of the county of Alexandria aforesaid, named in said last will and testament, who it is prayed may be made a defendant to this bill of complaint, caused a partition of all of the aforesaid real estate of the said deceased to be made at the May term 1834, of the circuit court of the District of Columbia, for the county of Alexandria on the law side, between himself, Thomas K. Wilson, John W. Wilson, a minor, George W. Wilson, a minor, and Walter S. Wilson, a minor, and Walter Ann Brockett, now intermarried with William Ball, all of the county of Washington, in the District of Columbia, and all of whom are also prayed to be made defendants to this bill of complaint; so that the said Robert Brockett, jun'r, received by said partition the one-third of said real estate in the county of Alexandria aforesaid, the said Wilsons another third, and the said Walter Ann another third; all of which will be shown to your honors, by a

reference to the proceedings in said case of partition, in your honors' court on the law side, and for the present a copy or abstract of the said partition is hereunto annexed, and made a part of this bill of complaint, and marked B. Your oratrixes and orator further charge and state that the said Robert Brockett, sen'r, deceased, died seized of other real and personal estate in the State of Virginia and elsewhere; but the names and description, extent and value of the same, or where situated, or how much, are unknown to your oratrixes and orator, who are kept in total ignorance of the same by the aforesaid defendants; all of whom, or some one of whom, it is charged, are in possession of the title papers and evidences to the same, and keep the same from the knowledge of your oratrixes and orator. Your oratrixes and orator further state and charge that, since the death of the said Robert Brocket, sen'r, a large estate, whether real or personal, or of what kind or nature they know not, they are informed and believe to be true, and so charge it, has devolved upon your oratrixes and orator, his children in right of said Robert Brocket, sen'r, deceased, either by descent, by bequest, or in some other manner in form, from some person or persons whose name or names are unknown to your oratrixes and orator, who are kept ignorant of the same by the said defendants who are in possession of the knowledge of the same, and that said defendants ought to disclose the same for the purpose of having justice done, and to enable your oratrixes and orator to establish their right and claim to any part of the same, if the law or equity and justice entitle them to it; and that said defendants refuse to give the information asked for.

Your oratrixes and orator further state and charge, that in order to defraud and defeat them of the benefit of the said last will and testament, as well as to defraud them of any right they may have in any other form or manner, and the premises and estate both real and personal to them thereby devised and bequeathed, the said defendants do pretend, that the said Robert Brocket, sen., deceased, never made such last will and testament, or that if he did, it is not a good and effectual last will and testament according to law, and that your oratrixes and orator have no right, title, claim, or demand to the said estate under said last will and testament, which they pretend is no last will and testament, and that they, the said defendants, are the heirs at law to the said deceased Robert Brocket, sen., and as such that the said partition is legal, and the said estate belongs alone to them, and that your oratrixes and orator, and neither or any of them, have any right to any part of said estate in virtue of said will, or as heirs at law to the said Robert Brocket, sen., deceased, or under any other claim or right whatsoever; and your oratrixes and orator further charge, that the said defendants have taken possession of all the estate aforesaid, and that they claim and hold the same in their own right, and have refused, and do refuse, to recognize your oratrixes and orator's rights, claims, or de-

mands to any part thereof, or to give, pay over, or account with your oratrixes and orator for any part thereof since the decease of the said Robert Brocket, sen. Your oratrixes and orator further state and charge, that the said last will and testament of the said deceased Robert Brocket, sen., ought to be established, and the trusts, conditions, and directions thereof performed and carried into execution, by and under the decree of your honors' court. Your oratrixes and orator further state and charge, that since the death of the said Robert Brocket, sen., the said Robert Brocket, jun., has been appointed by the orphans' court of the county of Alexandria aforesaid, administrator of Robert Brocket, senior's, deceased, estate, and as such he has never accounted with your complainants for any part of the said estate, and refuses so to do; and your honors ought to compel him to render a just and faithful account to your honors of his said administration, that your honors may be enabled to do justice in the premises. Your oratrixes and orator further state and charge, that they are entitled to, and ought to have received the income of, their portions of real and personal estate aforesaid, which have never been paid them, but refused to them by the defendants aforesaid, and particularly by the aforesaid Robert Brocket, jun.; and that the said defendants, or the said Robert Brocket, jun., as it may be found right and proper by your honors, are bound to pay and account with your oratrixes and orator for the same, and that your honors ought so to decree in the premises, and that an account ought to be taken of the same; all of which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, tend to injure and oppress your oratrixes and orator, and are done to defraud your oratrixes and orator, and are contrary to the law and the equity of the case. Your oratrixes and orator also charge to the contrary, and say that said will is good, and that they are entitled to their portions under said will as before stated; your oratrixes, Elizabeth and Anabella, by their said next friend, and your orator, further state and charge, that the said defendants are not the only legal heirs of said deceased Robert Brocket, sen., and that your said two oratrixes and orator are his children, equally entitled to inherit the aforesaid estate of said deceased with the defendants to this bill; and should your honors decree that said last will and testament is not good and operative so as to pass the said estate as therein named, then and in that case only, your said two oratrixes and orator claim to be allowed their just portion of said estate as heirs to said deceased, and that the said defendants ought to be compelled, or such of them as your honors think proper, to account to your said two oratrixes and orator for their portion of said estate both real and personal, and that your honors ought to give such orders in the premises, as to do justice; and that said defendants have taken possession of said real estate, under the partition aforesaid, and your honors ought to decree, that said partition is null and of no effect as between your

said two oratrixes and orator and the said defendants; and that your said two oratrixes and orator ought to be allowed and paid by the said defendants, the mesne profits of their several proportions, with interest, &c., as well as whatever sum of money may be coming to them from the personal estate of the said Robert Brockett, sen., deceased. Your said two oratrixes and orator further state and charge, that since the decease of the said Robert Brocket, sen., sundry persons have taken possession of a part of the aforesaid real estate, in the county of Alexandria aforesaid, and by what titles and for whom, your oratrixes and orator do not know, nor can they ascertain, unless it be by purchase or lease from the aforesaid defendants, or some of them, or some person acting for them, to wit, *George H. Smoot* of the lot between Cameron and King streets, in the town of Alexandria, in the county of Alexandria aforesaid, said lot running east and west on said streets, and north and south between Union and Water streets; *John Green* of a lot between Cameron and Queen streets, in said town, on Alfred street, with improvements thereon; *Julia Cain* of two lots with improvements on same street, and situated between said Cameron and Queen streets; *Henry Sims* of a lot with improvements situated as the said last mentioned improvements; John H. Brent of a lot with improvements on Prince, between Alfred and Columbus streets, in said town; *Philip Tresler* of a lot and improvements and open lot on said Prince street, opposite what is called the Six Buildings, and between Fayette and Alfred streets aforesaid; *William Foot* of a lot with improvements, situated as the last mentioned lot; *John Devaughan* of a lot and improvements on Duke street, between Fayette and Henry streets, in said town; *James Greenwood* of lot and improvements between Union and Water streets, running north and south, and between Queen and Roanoke streets, in said town, running east and west; *John T. Thompson* of lot and improvements on Washington street, in said town, commencing at the corner; *Edward Claxton* of lot and improvements next to last mentioned property on same street; *Mary F. Labille* of lot and improvements next to the lot on which said Claxton is; *Elijah Horseman* of lot and improvements on same street next to the one possessed by said Labille; *Joseph Dudley* of lot and improvements next to said lot of said Horseman; *Daniel L. Riggs* of lot and improvements on the corner of Cameron and Columbus streets aforesaid; *Jane Holly*, a free woman of color, of lot and improvements adjoining said lot of said Riggs; and *Ezra Lunt* of a lot of ground adjoining two last mentioned pieces of property; and your oratrixes and orator state and charge, that the said aforesaid persons have all confederated with the aforesaid defendants to deprive your oratrixes and orator of their just claims as aforesaid, and refuse to acknowledge their rights, and they also pray that the said persons may all be made defendants also to this bill of complaint. In tender consideration of the premises, and forasmuch as your oratrixes and orator are remediless

in a court of law, and can only have relief in a court of equity, where matters of this and the like nature are cognizable and relievable, your oratrixes and orator pray that the said defendants, and each of them, may true answers make, upon their corporal oaths, to all and singular the premises, as fully and particularly as if the same were here again repeated and interrogated, and may set forth and answer upon their said oaths, whether the said will is and was not "wholly written" by the said deceased Robert Brocket, sen., himself, and wholly in his proper handwriting? Also, whether your oratrixes and orator are not the same persons named in said will? Your oratrixes and orator also pray, that the said defendants may upon their oaths, in their said answer, disclose and set forth all the real estate of which the said deceased died seized in the county of Alexandria aforesaid, or in the District of Columbia, or in the State of Virginia, Kentucky, or elsewhere; and that in said statement, that said defendants may describe each specific piece of land or real estate, giving its situation, improvements, &c., in so full and ample manner that the same may be known, and also the number of feet that each seperate lot contains, and the number of acres contained in each farm, messuage, or tract of land? Also, that the said defendants may account upon their oaths for the annual value of each seperate piece of said property from the death of said Robert Brocket, sen., to the rendition of their said answers, and that they do answer upon oath, whether said account rendered by them be a just, faithful, and true account of all the real estate belonging to the said deceased, or to which he had any right, claim, interest, or demand; and, further, that they do also disclose the title papers to any land or tracts of land which said deceased was entitled to beyond the District of Columbia, and particularly relative to a certain tract of land in Virginia said to contain 1,200 acres or more, or whatever number it may contain, or wherever situated. Your oratrixes and orator further pray, that the said defendants may answer upon oath, whether a certain sum of money, and how much, or other estate, whether real or personal, or mixed, has not been left, or was not left, bequeathed, or devised, or deeded to the said deceased, or inherited by him in his lifetime, or to his heirs after his death, or inherited by them, by or from some person or persons now unknown to your oratrixes and orator, but well known to the said defendants, who either lived in some of the dominions of the King of *Brittain* or elsewhere out of the United States, and that the said defendants do disclose all that they know relative to the same, and set forth what sum of money or other estate was so bequeathed, devised, deeded, or inherited, and by or from whom, and when, and where the same now is, and who has received the same, and what has been done relative thereto. And your oratrixes and your orator further pray, that the said defendants may answer upon oath whether they are not in possession of said real estate in virtue of the aforesaid partition, and whether they have partaken the other real estate of the

said deceased, situated in Virginia and elsewhere, and if so, how and when the same was divided, and who now possesses the same, and what the mesne profits and income from the same have been since the decease of the said Robert Brocket, sen. Your oratrixes and orator further pray your honors, that the said defendants ,and particularly the said Robert Brocket, jun., may upon their oaths render a true and faithful account of all the personal estate of the said deceased, with interest thereon, shewing the amount of the same, and if any has been expended or paid over to any one, that they shall produce vouchers for every thing, and held to strict accountability for the same, in every respect.

Your oratrixes and your orator further pray your honors, that the said will and testament may be established, and that the trusts and directions therein contained may be carried into execution by and under the direction of your honors' court, and that an account may be taken of the said Robert Brocket, senior's, estate, real and personal, and of his debts, legacies, and bequests, bequeathed by said will and testament, and that the said defendants be compelled to account for the same, and that the said real estate may be partaken and divided, as in said will directed, and to carry the same into effect that proper and fit persons be appointed, (the said Francis Peyton named as one of the said persons to divide the same having died since the death of said testator,) and that your oratrixes and your orator may recover by a decree of your honors not only their just portion of said real estate, but that the said defendants may be adjudged and decreed to pay to each of them their just portion of the mesne profits or value of said real estate from the death of the said Robert Brocket, sen., with interest until paid; and also, that the clear balance of said personal estate may be ascertained, and the portion your oratrixes and your orator, may be entitled to, paid to each of them with interest, and that the said defendants may by a decree of your honors be perpetually enjoined, and all persons claiming under them, from taking any thing by the partition made as aforesaid, in the case aforesaid referred to by exhibit B, and that the same may be cancelled and declared of no effect, as against your oratrixes and your orator, who pray that they may be perpetuated in the peaceable enjoyment of their rights against the said partition.

But should your honors be of the opinion (which cannot be supposed) that said instrument of writing is not the last will and testament of the said deceased, then, and in that case only, your oratrixes, Elizabeth, a minor, and Annabella, a minor, by their next friend aforesaid, and your orator, pray your [honors] that their claims and rights to the real and personal estate of the said deceased, may be established and decreed by your honors, as the children and legal heirs of said deceased, and that your honors do decree and adjudge that as such they are entitled to an equal portion of the said deceased's real and personal estate, and that your honors

do decree an account to be taken of the same, and that the same *to* be equally divided between them in equal portions, with the other defendants who prove themselves to be heirs with them, and that your oratrixes and your orator may also have a decree for the mesne profits and income of their portions of the said real estate from the death of the said Robert Brocket, sen., with interest until paid, and also for the interest upon their portion of the personal estate.

Your oratrixes and orator pray your honors for all other and further relief in the premises, that may appear just and proper, and to effect the same, that your honors do give such other orders and decrees, as may appear consonant to equity and good conscience, the same as if specifically asked and prayed for; and that your honors do grant the United States writ of subpœna, directed to all of the aforesaid defendants, commanding them at a certain day therein named, and under a certain pain, personally to be and appear in your honors' court, then and there to answer the premises and to stand to and abide such order and decree therein, as to your honors shall seem agreeable to equity and good conscience. They also pray that the proper orders may be made, and proper persons named and appointed to take and make answers to this bill of complaint for the aforesaid minors, and your oratrixes and orator will ever pray, &c.

BRENT & BRENT,
Complainants' solicitors.

WASHINGTON COUNTY, *District of Columbia, to wit:*

Be it remembered that, upon this 6th day of March, 1837, before me, a justice of the peace for the county aforesaid, personally appear Elizabeth Brocket, the elder, William Brocket, Annabella Brocket, and Elizabeth Brocket, the younger, the within complainants, and make oath, that the facts as herein stated as of their own knowledge are true, and so far as derived from the knowledge or information of others, they believe them to be true.

JOHN D. CLARK,
Justice of the peace.

Exhibits referred to in complainants' bill.

A.

Will of Robert Brocket—*Will of Robert Brocket.*

The last W— and T— of R. B. sr. of Alexandria, viz:

Item 1st. I give and bequeath to my grand daughter, Walter Ann Brocket, the house I live in with all its appurtenances.

2d. I give and bequeath, to my eldest son, Robert Brocket, my youngest son William Brocket, and my two daughters, Annabella and Elizabeth Brocket, and Elizabeth their mother, all my other real and personal estate, except such as I shall hereafter reserve,

and in the following manner, viz: all the children being of full age, and one year after my death, three persons shall be chosen according to law; one of which I now name, Francis Peyton, if then alive; two will then be left to the choice of the parties or the court; and, in order to divide the property in the best manner, they are to proceed thus: not less than two building lots (when practicable) are to be put together; drawings of the property will be thereto attached; they will be numbered, and should any be mislaid, they must be found, it being my last will that all the lines shall stand as I have laid them out; should there arise any *difer*ence about the value of the *lotes*, each *comissioner* shall make his own value, and a third part, when added together, shall be the value thereof; and when all the *reale* estate is divided into five equal parts and numbered, the parties shall then draw or cast *lotes* to determine which number shall be their *sheare*, but second, third, and *forth;* the fifth number belongs to the fifth person without drawing. It is also my will that at the death of the widow her part shall be equally divided between Robert Brockett my grandson, and my *sone* Will'm if then alive; if not, to the nearest male heir of the name of Brocket; and in all cases of the female parties above described, and dying without legal heirs of their own bodies, their part shall also be divided amongst the nearest male heirs of the name of Brocket.

At a session of the orphan's court for the county of Alexandria, in the District of Columbia, the 19th Jan'y, 1830, this instrument of writing, purporting to be the last will and testament of Robert Brocket, deceased, was this day offered for probate by Thomas W. Hewitt, of counsel for Elizabeth Brocket, and proved by the oaths of James Carson and James Douglass to be wholly written by the decedent, and so admitted by his administrator, but the court refused to admit the same to record; whereupon the said counsel appeals to the circuit court of the District of Columbia and county of Alexandria.

A copy, test: A. MOORE, *Reg'r Wills.*

The foregoing, a true copy of the orginial instrument on file in my office, together with the proceeding thereon before the orphan's court of Alexandria county.

A. MOORE, *Reg'r Wills.*

Common order of publication.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 7th day of October, 1837, came the complainants by their solicitor, and the defendant Robert Brocket, by Robert I. Taylor, esq., his solicitor, and, by consent, general commissions are awarded either party to take depositions; and the defendant Thomas Wilson, not having entered his appearance to this suit, and answered the complainants' bill, and given

security according to the statute and the rules of the court; and it appearing to the satisfaction of the court that Thomas Wilson is not an inhabitant of the District of Columbia, on motion of the complainants, it is ordered that the said Thomas Wilson do appear here on or before the first day of the next May term of this court, and answer the complainants' bill, and give security according to the statute and the rules of this court; and that a copy of this order be forthwith published for two months in the Alexandria Gazette, and another copy posted on the front door of the court house of the county; and Robert Brockett is appointed guardian ad litem for the infant defendants in this suit.

Bill taken for confessed.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of April, 1838, (until which time this cause had been regularly continued,) came the complainants, by their solicitors; and on their motion the complainants' bill is taken for confessed, and set for decree as to the resident defendants, and continued against the absentees.

And at a court continued and held for the district and county aforesaid, the 4th day of June, 1838, this cause was continued.

Robert Brockett appointed guardian ad litem for the infant defts.—Answer filed, and general replication.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 8th day of October, 1838, came the parties aforesaid by their solicitors, and Robert Brockett is appointed guardian ad litem to the infant defendants John W. Wilson and Walter S. Wilson; and thereupon the said defendants, by Robert I. Taylor, esq., their solicitor, appeared and filed their answers, to which answers the plaintiffs reply generally, and by consent the cause is set for hearing, and general commissions are awarded to take depositions; which answer is as follows:

Answer of Robert Brockett.

The seperate answers of Robert Brockett to the bill of complaint exhibited against him and others before the circuit court of the District of Columbia, at Alexandria, by *Elizabeth Brockett*, William Brockett, Anna Bella Brockett, and Elizabeth Brockett, the younger.

This respondent, saving to himself the benefit of exceptions to the many errors, imperfections, and untruths in the complainants' bill contained, in answer to so much thereof as he is advised is material, answers and says, that it is not true that Robert Brockett, the elder, father of this respondent, made and published his last will and testament as the complainants have charged; that the complainants exhibited for probate before the orphan's court of Alexandria county, the said court having full jurisdiction of the matter,

and over the parties concerned, a certain paper said to be a copy of the pretended will in the complainants' bill mentioned, the pretended original being said to have been lost; and that the validity of the said pretended will, coming on to be tried before the said orphan's court, at term in the year 1838, on plenary proceedings, to which the complainants and defendants to this suit were parties, it was by the said court adjudged, and accordingly decreed, that the said paper was not properly executed as the will of the said Robert Brockett, the elder, so as to pass the title to his real estate, but was sufficiently executed as a will of personalty only, from which decree and judgment of the orphans' court, the petitioners, complainants in this suit, appealed to your honorable court; and at October term, 1838, the decree of the said orphans' court was affirmed by your honors; which decree yet remains in full force and effect, as will appear by the record of proceedings before your honors now remaining.

This respondent does, therefore, deny that the complainants, or any of them, have any claim, right, or title to the real estate of the said Robert Brockett, the elder, as devisees; this respondent further denies that the complainant Elizabeth Brockett, the elder, was ever the wife of the said Robert Brockett, the elder; he denies that the complainants, William, Anna Bella, and Elizabeth Brockett, the younger, or either of them, are the legitimate children of the said Robert Brockett, the elder, and he denies that they, or any of them, are in any way entitled to inherit the real estate of which the said Robert Brockett, the elder, died seized; this respondent charges that, in the year the said Elizabeth Brockett, the elder, claiming to be the widow of the said Robert Brockett, the elder, instituted proceedings, on the chancery side of your honorable court, against the legal heirs of the said Robert Brockett, the elder, parties defendants hereto, claiming an assignment of dower in the real estate of the said Robert Brockett, the elder, in which suit such proceedings were had that your honors directed a jury to be impanneled at the bar of your honorable court, to say whether the said Elizabeth Brockett, the elder, had ever been united in lawful marriage with the said Robert Brockett, the elder, on the trial whereof the said jury found and returned to your honors a verdict that the said Elizabeth Brockett had never been so united to the said Robert; which suit of the said Elizabeth was thereupon dismissed, as by the proceedings in which suit yet in your honorable court remaining, and which this respondent prays to be received as a part of this answer, will more fully appear. This respondent relies upon the said decree in the said suit as fully establishing not only the fact of there having been no marriage between the said Robert Brockett, the elder, and the said Elizabeth, but of course establishing the fact that the complainants, William, Anna Bella, and Elizabeth, the younger, if in fact they be the children of the said Robert Brockett, the elder, are illegitimate, and are not entitled to any part of his estate as heirs or distributees.

This respondent admits that the real estate of which the said Robert Brockett, the elder, died seized, within the county of Alexandria, was divided between his legitimate children claiming it as heirs as the complainants have charged; he admits that they have since held it according to the said partition; that the proceedings in the said suit for partition will shew all the real estate in the county of Alexandria of which the said Robert Brockett, the elder, died seized; a copy of said partition being hereto annexed as part of this answer, marked B. [Exhibit B, page 157, of his record.] This respondent knows of no other real estate to which the said Robert had or claimed title, except an undivided interest to the extent of 12,000 acres in certain lands in Pendleton county, in Virginia, the deed for which is in the hands of this respondent, ready to be produced when called for by your honors. This respondent admits that letters of administration on his father's estate were granted to him by the orphans' court of Alexandria county; he avers that he has fully administered the said estate, which was not sufficient for the payment of funeral expenses, and the debts of the decedent; and that he has long since settled the accounts of his administration before the said court. This respondent knows of no claim or right which his father had to real or personal estate other than as before stated, except that he has heard that by a deed of settlement in trust, in nature of a testamentary disposition of his property, that the sum of £120 sterling was given to his father, the said Robert Brockett, the elder, and his heirs, by his brother Andrew Brockett, late of Glasgow, in that part of Great Britain called Scotland; that this respondent has received no part of the said legacy; and as the said Robert Brockett, the elder, died before his brother Andrew, this respondent is not advised as to the validity of the said settlement in favour of the heirs of the said Robert. This respondent prays to be dismissed with costs, &c.

R. I. TAYLOR, *for Respond't.*

ALEXANDRIA COUNTY, *sct:*

This day Robert Brockett personally appeared before the subscriber a justice of the peace of the county aforesaid, and solemnly made oath, in due form of law, that the several matters in the foregoing answer stated as of his knowledge are true, and all others he believes to be true.

Given under my hand, this seventh day of May, 1839.

GEO. WISE.

To stand as the answer of R. B., filed at October term, 1838.

R. I. TAYLOR.

Agreement of counsel.

Circuit court of the District of Columbia, sitting in chancery for the county of Alexandria.

BROCKETT & OTHERS, }
vs.
BROCKETT & OTHERS. }

It is agreed that, in this case, the answer of Robert Brockett shall be taken as the answer for all the other defendants named in the bill of complainants, to have the same effect as if each seperate defendant had answered, and that the same agreement shall exist as to any further or amended answer put in by said Robert Brockett.

BRENT & BRENT, *for Compls.*
EDM. I. LEE, } *for Defendants.*
TH. SEMMES, }

May 10th, 1841.

Leave to amend the bill, &c.

And at a court continued and held for the District and county aforesaid, the 14th day of October, 1839, came the parties by their solicitors, and upon motion, &c., it was alleged that some of the defendants having put in their answers to the present complainants' bill, the complainants are advised to amend the same by striking out the name of Elizabeth Brockett, first named in said bill, and to dismiss said bill as to her with her consent here in court given, but shall not require further answers from the defendants who have answered; and therefore it was prayed that the said complainants be at liberty to amend their bill as they shall be advised by striking out the name of said Elizabeth Brockett from said bill as complainant, and by dismissing the same as to her, which is ordered accordingly. And upon motion, &c., it was alleged, that some of the defendants having put in their answers to the complainants, are advised to amend the same by striking from said bill all matters and things relative to the personal estate of the deceased Robert Brockett, or of any personal estate whatever to which said complainants have any right or claim whatever, but shall not require further answers from the defendants who have answered; and therefore it was prayed that the complainants be at liberty to amend their bill as they shall be advised, by striking from said bill all matters and things, and relief asked relative to any personal estate whatsoever, which is ordered accordingly. Upon motion, &c., it was alleged, that some of the defendants having put in their answer to complainants' bill, the complainants are advised to amend their said bill by adding Elizabeth Brockett, deceased, of Washington county, District of Columbia, widow of Robert Brockett, deceased, defendant thereto, but shall not require further answers from said defendants who have already answered; and therefore it is prayed that the complainants may be at liberty to amend their said bill as they shall be advised, by making the said Elizabeth Brockett defendant there-

to, with apt words to charge her, which is ordered accordingly. Thereupon, the complainants filed their amended bill, and subpœna awarded, and the said Elizabeth Brockett appeared by her counsel, and filed her answer and general replication and issue, and the cause is returned to the rules for further proceedings, and commissions awarded to take depositions, which amended bill and answer is as follows:

Amended bill.—*Amended bill.*

To the honorable judges of the circuit court of the District of Columbia, sitting as a court of chancery for the county of Alexandria.

The amended bill of complaint of your orator, William Brockett, and your oratrixes, Annabella Brockett and Elizabeth Brockett, minors of tender age, by their next friend, the said Wm. Brockett, made by the orders and permission of your honors, the original bill filed by your orator and oratrixes against Robert Brockett and others, asking for a division of certain estate of deceased, Robert Brockett, in manner and form as prayed for in said bill of complaint, to which reference is made by this amended bill, humbly complaining, show unto your honors, William Brockett, Annabella Brockett, a minor of tender age, by her next friend, the said William Brockett and Elizabeth Brockett, also a minor of tender age, by the said William Brockett, her next friend, all of the county of Washington, in the District of Columbia, that Robert Brockett, sen., of the county of Alexandria, in said District, lately deceased, being in his life-time, and at the time of his death, seized, possessed of, and interested in a very considerable real estate, in the county of Alexandria, in the District of Columbia, in the State of Virginia, and elsewhere in the United States, and in Europe; and being minded to settle and dispose of the same, did in his life-time (being of sound and disposing mind, memory, and understanding) duly make and publish his last will and testament, in his own proper handwriting, and wholly by himself, as will be shown to your honors by the production of the same, which is not now in the possession of your orator and oratrixes, but a copy of the said last will and testament is hereunto annexed, and made part of these complainants' bill, the same as if it had been verbatim transcribed into the same, and is marked A; which said last will and testament your oratrixes and orator charge and state is a good and effectual will and testament, for the purpose of conveying [and] devising all of said estate, both real and personal, as therein stated and directed, according to the law in such case made and provided; and that the said deceased so intended the same, and so declared in his life-time, and during his last sickness, of which he died; and your oratrixes and orator further state unto your honors, that after making the said last will and testament, to wit, on the day of March, in the year of our Lord, 1829, the said Robert Brockett, sen., departed this life without revoking or making any alteration of the same, but on the

contrary, after declaring that the same should stand and be his last will and testament for the purposes therein expressed, seized and possessed as aforesaid.

Your oratrixes and orator charge and state, that by said last will and testament as devisees and legatees of the same, each of your oratrixes and orator were and are entitled to one-fifth part of the whole estate, real and personal, (after deducting therefrom the bequest to Walter Ann Brockett, the grand-daughter named in the beginning of said last will and testament,) to be divided in manner and form as pointed out in said last will and testament, and subject to all the conditions and stipulations therein contained. That your oratrixes and orator hoped that they should have quietly and peaceably held and enjoyed the said estate, real and personal, according to the directions of said last will and testament, as in all justice and equity they ought to have done. But now, so it is, may it please your honors, that Robert Brockett, jun., of the county of Alexandria aforesaid, named in said last will and testament, who is prayed may be made a defendant to this bill, has caused a partition of the whole of the aforesaid real estate of the said deceased to be made at the May term, 1834, of the circuit court of the District of Columbia, for Alexandria county, on the law side, between himself, Thomas K. Wilson, John Wilson, a minor, George W. Wilson, a minor, Walter S. Wilson, a minor, and Walter Ann Brockett, now intermarried with William Ball, all of the county of Washington, in the District of Columbia, and all of whom are also prayed to be made defendants to this bill; so that the said Robert Brockett, jun., received by the said partition one-third of the said real estate in the county of Alexandria aforesaid, the said Wilsons another third, and the said Walter Ann another third; all of which will be shewn to your honors by a reference to the proceedings in said case of partition in your honors' court on the law side; and for the present a copy or abstract of said partition is hereunto annexed, and made a part of this bill of complaint, marked B.

Your oratrixes and orator further charge and state, that the said Robert Brockett, sen., deceased, died seized of other real estate in the State of Virginia and elsewhere, but the names and description, extent and value, or where situated, or how much, are unknown to your oratrixes and orator, who are kept in total ignorance of the same by the aforesaid defendants, all of whom, or some of whom, it is charged are in possession of the title papers and evidences of the same, and keep the same from the knowledge of your oratrixes and orator.

Your oratrixes and orator further state and charge, that in order to defraud and defeat them of the benefit of the said last will and testament, as well as to defraud them of any right they may have in any other form or manner, and the premises and real estate to them thereby devised and bequeathed, the said defendants so pretend, that the said Brockett, sen., deceased, never made such last

will and testament, or that if he did, it is not a good and effectual last will and testament, according to law; and that your oratrixes and orator have no right, title, claim, or demand to said estate under said last will and testament, which they pretend is no last will and testament, and that they, the said defendants, are the heirs at law of the said deceased Robert Brockett, sen., and, as such, that the said partition is legal, and the said estate belongs alone to them, and that your oratrixes and orator, and neither or any of them, have any right to any part of said estate in virtue of said will, or as heirs at law to said R. Brockett, sen., deceased, or under any other claim or right whatsoever.

And your oratrixes and orator further charge, that said defendants have taken possession of all the estate aforesaid, and that they claim and hold the same in their own right, and have refused and do refuse to recognize your oratrixes' and orator's claims as heirs of deceased Brockett to any part thereof, or to give, pay over, and account with your oratrixes and orator for any part thereof, since the decease of said Robert Brockett, sen.

Your oratrixes and orator further state and charge, that the said last will and testament of said deceased Brockett, sen., ought to be established, and the trusts, conditions, and directions thereof performed and carried into execution by and under the decree of your honorable court.

Your oratrixes and orator further charge, that they are entitled to and ought to have received the income of their portion of the real estate, which has never been paid them, but refused by the defendants aforesaid, and particularly by said Robert Brocket, jr., and that the said defendants, or the said Robert Brockett, jr., as it may be found right and proper by your honors, are bound to pay and account with your oratrixes and orator for the same, and that your honors ought to so decree in the premises, and that an account ought to be taken of the same. All which actings and doings of said defendants are contrary to equity and good conscience, tend to injure and oppress your oratrixes and orator, and are contrary to the law and equity of the case.

Your oratrixes and orator also charge to the contrary, and say said will is good, and they are entitled to their portions under the said will as before stated; your oratrixes, Elizabeth and Annabella, by their said next friend, and your orator, further state and charge, the said defendants are not the only legal heirs of said deceased Robert Brockett, sen'r, and that your said two oratrixes and orator are his children, equally entitled to inherit the aforesaid estate of said deceased with the defendants to this bill; and should your honors decree that said last will and testament is not good and operative, so as to pass the said estate as therein named, then and in that case, only, your said two oratrixes and orator claim to be allowed their just portion of said estate as heirs to said deceased; and that the said defendants ought to be compelled, or such of

them as your honors think proper, to account to your said two oratrixes and orator for their portion of said estate real, and that your honors ought to give such orders in the premises as to do justice; and that said defendants have taken possession of said estate, under the partition aforesaid, and your honors ought to decree that said partition is null and of no effect as between your said two oratrixes and orator and the said defendants; and that your said two oratrixes and orator ought to be allowed and paid by the said defendants the mesne profits of their several proportions with interest, &c.

Your said two oratrixes and orator further state and charge, that since the decease of the said Robert Brockett, sen'r, sundry persons have taken possession of a part of the aforesaid real estate in the county of Alexandria aforesaid; and by what titles and for whom, your oratrixes and orator do not know, nor can they ascertain, unless it be by purchase or lease from the aforesaid defendants, or some one of them, or some person acting for them, to wit: *George H. Smoot*, of the lot between Cameron and King streets, in the town of Alexandria, in the county of Alexandria aforesaid, said lot running east and west on said streets, and north and south between Union and Water streets; *John Green*, of a lot between Cameron and Queen streets in said town, on Alfred street, with improvements thereon; *Julia Cain* of two lots with improvements on same street, and situated between said Cameron and Queen streets; *Henry Sims*, of a lot with improvements situated as the said last mentioned improvements; *John H. Brent*, of a lot with improvements on Prince, between Alfred and Columbus streets, in said town; *Philip Tresler*, of a lot and improvements, and open lot on said Prince street, opposite what is called the Six Buildings, and between Fayette and Alfred streets aforesaid; William Foot of a lot with improvements, situated as the last mentioned lot; *John Devaughan*, of lot and improvements on Duke street, between Fayette and Henry streets, in said town; *James Greenwood*, of a lot and improvements between Union and Water streets, running north and south, and between Queen and Roanoke streets, in said town, running east and west; *John I. Thompson*, of lot and improvements on Washington street, in said town, commencing at the corner; *Edward Claxton*, of lot and improvements next to last mentioned property on same street; *Mary T. Labille*, of lot and improvements next to the lot on which said Claxton is; *Elijah Horseman*, of lot and improvements on same street, next to the one possessed by said Labille; *Joseph Dudley*, of lot and improvements next to said lot of said Horseman; Daniel L. Riggs, of lot and improvements on the corner of Cameron and Columbus streets aforesaid; Jane Holley, a free woman of color, of lot and improvements adjoining said lot of said Riggs, and *Ezra Lunt*, of a lot of ground adjoining two last mentioned pieces of property.

And your oratrixes and orator state and charge, that the said

aforesaid persons have all confederated with the aforesaid defendants to deprive your oratrixes and orator of their just claims as aforesaid, and refuse to acknowledge their rights; and they also pray that the said persons may be made defendants also to this bill of complaint.

In tender consideration of the premises, and for as much as your oratrixes and orator are remediless in a court of law, and can only have relief in a court of equity, where matters of this and the like nature are cognizable and relievable, your oratrixes and your orator pray that the said defendants, and each of them, may true answers make upon their corporal oaths to all and singular the premises, as fully and particularly as if the same were here again repeated and interrogated, and may set forth and answer upon their said oaths whether the said will is and was not "wholly written by the said deceased Robert Brockett, sen'r, himself, and wholly in his proper handwriting; also, whether your oratrixes and orator are not the same persons named in said will?

Your oratrixes and orator also pray that the said defendants may, upon their oaths, in their said answer disclose and set forth all the real estate of which the said deceased died seized in the county of Alexandria aforesaid, or in the District of Columbia, or in the State of Virginia, Kentucky, or elsewhere; and that in said statement that said defendants may describe each specific piece of land or real estate, giving its situation, improvements, &c., in so full and ample manner that the same may be known, and also the number of feet that each separate lot contains, and the number of acres contained in each farm messuage or tract of land; also, that the said defendants may account upon their oaths for the annual value of each separate piece of said real property from the death of said Robert, sen'r, to the rendition of their said answers; and that they do answer upon oath whether said account rendered by them be a just, faithful, and true account of all the real estate belonging to the said deceased, or to which he had any right, claim, interest, or demand; and further, that they do also disclose the title papers to any land or tracts of land which said deceased was entitled to beyond the District of Columbia, and particularly relative to a certain tract of land in Virginia, said to contain 1200 acres or more, or what ever number it may contain, or wherever situated.

Your oratrixes and orator pray that the said defendants may answer upon oath, whether other estate real, has not been left, or was not left, bequeathed or devised, or deeded to the said deceased, or inherited by him in his life-time, or to his heirs after his death, or inherited by them by or from some person or persons now unknown to your oratrixes and orator, but well known to the said defendants, who either lived in some of the dominions of the King of Britain or elsewhere without the United States, and that the said defendants do disclose all that they know relative to the same, and set forth what estate was so bequeathed, devised, deeded, or inhe-

rited, and by and from whom, and when, and where the same now is, and what has been done relative thereto.

And your oratrixes and orator further pray, that the said defendants may answer upon oath, whether they are not in possession of said real estate in virtue of the aforesaid partition, and whether they have partaken the other real estate of the said deceased, situated in Virginia and elsewhere; and, if so, how and when the same was divided, and who now possesses the same, and what the mesne profits and income from the same have been since the decease of the said Robert Brockett, sen.

Your oratrixes and your orator further pray your honors, that the said will and testament may be established, and that the tracts and directions therein contained may be carried into execution by and under the direction of your honors' court, and that an account may be taken of the said Robert Brockett, senior's estate, real, bequeathed by said will and testament, and that the said defendants be compelled to account for the same, and that the said real estate may be partaken and divided as in said will directed; and to carry the same into effect, that proper and fit persons be appointed, (the said Francis Peyton named as one of the said persons to divide the same, having died since the death of said testator,) and that your oratrixes and your orator may recover by a decree of your honors not only their just portions of said real estate, but that the said defendants may be adjudged and decreed to pay to each of them their just portion of the mesne profits or value of said real estate from the death of the said Robert Brockett, sen., with interest until paid, and that the said defendants may by a decree of your honors be perpetually enjoined, and all persons claiming under them, from taking any thing by the partition made as aforesaid, in the case aforesaid, referred to by exhibit B, and that the same may be cancelled and declared of no effect as against your oratrixes and orator, who pray that they may be perpetuated in the peaceable enjoyment of their rights against said partition.

But should your honors be of opinion (which cannot be supposed) that said instrument of writing is not the last will and testament of the said deceased, then, and in that case only, your oratrixes Elizabeth, a minor, Annabella, a minor, by their next friend aforesaid, and your orator, pray that their claims and rights to the real estate of the said deceased may be established and decreed by your honors, as the children and legal heirs of said deceased; and that your honors do decree an account to be taken of the same, and that the same be equally divided between them in equal portions with the other defendants, who prove themselves to be heirs with them, and that your oratrixes and orator may also have a decree for the mesne profits and income of their portions of the said real estate from the death of the said Robert Brockett, sen., with interest until paid, and for all waste committed.

Your oratrixes and orator pray your honors for all other and fur-

ther relief in the premises that may appear just and proper, and to effect the same that your honors do give such other orders and decrees, as may appear consonant with equity and good conscience, the same as if they were specifically asked and prayed for; and that your honors do grant the United States writ of subpœna, directed to all of the aforesaid defendants, commanding them at a certain day therein named, and under a certain pain, personally to be and *and* appear in your honors' court, then and there to answer the premises, and to stand to and abide such order and decree therein as to your honors shall seem agreeable to equity and good conscience. They also pray that the proper orders may be made, and proper persons named and appointed to take and make answers to this bill of complaint, for the aforesaid minors. And your oratrixes and orator will ever pray, &c.

BRENT & BRENT,
Complainants' solicitors.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Alexandria, in chancery.

The amended bill, as ordered by your honors, of your orator William Brockett, and oratrixes Elizabeth Brockett and Annabella Brockett, both minors, by their next friend, the said William Brockett, to the bill of complaint in your honors' court against Robert Brockett and others, as will appear by a reference to the same, which is respectfully made, praying for a division of the real estate of Robert Brockett, sen., their father, (deceased,) most respectfully shew, that Elizabeth Brockett, of Washington county, in the District of Columbia, is the widow of the said deceased Robert Brockett, and is entitled to a portion of said real estate either under the said alledged last will and testament of said deceased, if it be a valid one, as a devisee, or if the same be not valid in law, that she has an interest in said division for her third or dower in the same, all of which is answered and charged by your complainants; and that to have full and complete justice *due*, the said Elizabeth ought to be made defendant to this cause, and her rights ascertained, and said division made in regard thereto; and inasmuch as your complainants are remediless at law, and can only have relief before your honors, they pray that said Elizabeth may be made defendant to this bill, and that subpœna may issue, and that she may be compelled to answer your complainants' bill, and that the decree of your honors may be made in reference to her rights, if she has any.

They also pray for all other relief that your honors can grant and give in the premises; and, as in duty bound, will pray, &c.

BRENT & BRENT, *for complainants.*

Elizabeth Brockett's answer.—*Elizabeth Brockett's answer.*

The answer of Elizabeth Brockett to the bill of complaint of William Brockett, Elizabeth Brockett, jr., and Annabella Brockett.

This respondent comes and admits that she is the widow of the Robert Brockett, sen., mentioned in the bill of the complainants, and that the said Robert Brockett, sen., did execute previous to his death the last will and testament which is exhibited in the original bill of complainants, and which this respondent is advised is a valid and sufficient legal last will and testament, and she submits her rights as devisee under said last will and testament, to your honorable court, and prays that her rights as aforesaid may be ascertained and adjudged; and in case your honorable court should be of the opinion, that said last will and testament is inoperative and void in law, then this respondent submits, that she is the widow of said Robert, sen., and in case of intestacy by said deceased, she is lawfully entitled to her dower or thirds for her natural life, in the real estate mentioned in the bill of complaint, and she prays in that event, and in that event only, she may be decreed to have her dower laid off and adjudged to her in the premises, and she admits that all the allegations in said bill are true in fact.

ELIZABETH BROCKETT.

As counsel for the complainants, we agree to take the above answer, the same as if sworn to.

BRENT & BRENT.

Cause set for hearing.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of September, 1841, came the parties by their solicitors, and this cause is set for hearing on bill, answers, replications, depositions, and exhibits.

Issue ordered.

And at a court continued and held for the District and county aforesaid, the 13th day of May, 1842, (until which time this cause had been regularly continued,) came the parties by their solicitors, and in this cause the amended bill of complainants and answers of defendants having been filed and depositions taken, and the cause being set for final hearing according to the agreement of counsel on file, the court doth order and direct, that a jury be empannelled and sworn at the bar of this court to ascertain and enquire, whether or not William Brockett, Annabella Brockett, and Elizabeth Brockett, the complainants in said bill of complaint, are the heirs at law of the late Robert Brockett, sen., of Alexandria county, D. C., as alledged in said bill of complaint; and in case the jury shall find that the complainants are the heirs at law of the said Robert Brockett, then the said jury shall further find how many heirs at law were left by said Robert Brockett, sen., at his death, and shall designate

the said heirs at law by name in their verdict; and it is further ordered, that in the trial of the issue hereby directed, William Brockett, Annabella Brockett, and Elizabeth Brockett, the said complainants, be plaintiffs, the said Robert Brockett, jun., William Ball, Walter Ann his wife, and all the other defendants who have appeared to said amended bill of complaint, except Elizabeth Brockett, sen., be defendants in the trial of said issue. And it is further ordered, that the depositions taken in said cause be read on the trial of said issue, with leave to either party to examine such of said witnesses as have testified under commission, as the said party so desiring to examine may produce on the trial, and with leave to examine such other witnesses viva voce, and generally to produce all such testimony as may be proper in a trial at law; whereupon, a venire facias was awarded, returnable immediately; thereupon, came a jury, to wit:

Jury sworn.

Geo. I Thomas, Benjamin H. Lambert, Samuel Lindsay, Washington T. Harper, Edward Smyth, James Douglass, Isaac Robbins, Charles C. Smoot, Thomas Whittington, John D. Harrison, Samuel Peach, and John Grubb, who being sworn and affirmed to try the above issue, and by consent of parties, and with the assent of the court, are continued until to-morrow.

And at a court continued and held for the District and county aforesaid, the 14th day of May, 1842, came the parties aforesaid by their solicitors, and the jury sworn to try the issue in this case appeared in court; and, after hearing the testimony in the case, by consent of parties, and with the assent of the court, are continued until Monday morning, 10 o'clock.

And at a court continued and held for the District and county aforesaid, the 16th day of May, 1842, came the parties aforesaid by their solicitors, and the jury sworn to try the issue in this cause appeared in court, and having heard the arguments of counsel, by consent of parties and with the assent of the court, are continued until to-morrow.

And at a court *court* continued and held for the District and county aforesaid, the 17th day of May, 1842, came the parties aforesaid, and the jury sworn to try the issue in this case appeared in court; and, after hearing the argument of counsel, by consent of parties and the assent of the court, are continued until to-morrow.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 18th day of May, 1842, came the parties by their solicitors, and the jury sworn to try the issue in this case appeared in court pursuant to their adjournment; and, after hearing the conclusion of the argument of counsel, returned the following verdict:

1307.

Verdict.

"We of the jury find that the plaintiffs are the legitimate children and heirs of Robert Brockett, sen'r, deceased, at law, in common with Robert Brockett, son of said deceased, Walter Ann Brockett, (wife of William Ball,) only child of deceased, Walter Brockett, another son of said Robert Brockett, deceased, and the children of Margaret Wilson, deceased, another child of said Robert Brockett, deceased; and we further find, as directed by the order of the court, that, at the death of the said Robert Brockett, sen'r, he left, as his heirs-at-law surviving him, the following children, viz: The three plaintiffs, Robert Brockett, jr., Walter Ann Brockett, only child of deceased Walter Brockett, child of said Robert Brockett, sen'r, and the following children of Margaret Brockett, named by marriage Wilson, also a child of said Robert Brockett, deceased, to wit: Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson. The defendants tendered bills of exceptions, which were signed, sealed, and enrolled.

Defendant's 1st bill of exceptions.—*Defendant's 1st bill of exceptions.*

BROCKETT, *vs.* BROCKETT.

On the trial of the issue ordered by the court in this case, the plaintiffs offered evidence, consisting of the depositions of James Dixon, Harrison Bradley, James English, Edmund I. Lee, George W. Carlin, Charlotte Jacobs, James Phillips, John Phillips, Deborah Thomas, Robert Boyd, Abraham Butler, James Caden, and Ann Maria Ritchie, (for their depositions see page of this record,) to show that Robert Brockett, sen'r, and Elizabeth, the mother of plaintiffs, lived in the same house together as man and wife; that they were considered as man and wife by the general repute of the neighborhood, and cohabited as such; that he called her Mrs. Brockett, had children by her, whom he recognized as his; and that he introduced her to persons as his wife. To the admission of which evidence the defendants objected, and prayed the court to exclude the same as incompetent evidence to shew an actual marriage between the parties, the plaintiffs not having shewn, and not having offered to shew, in the course of any part of the trial, any certificate of the alledged, or any proof of the actual, marriage having been celebrated according to the forms and provisions prescribed by the act of Assembly of Virginia, entitled an act, &c., passed in the year ; which objection to the admissibility of the said evidence contained in the said depositions the court overruled, and admitted the depositions to be read to the jury; to which admission of said evidence, and the overruling of defendant's ob-

jection, they except; and this their bill of exceptions is signed, sealed, and ordered to be enrolled this 18th day of May, 1842.

WM. CRANCH, [SEAL.]
JAMES S. MORSELL. [SEAL.]

Defendant's 2d bill of exceptions.—*Defendant's 2d bill of exceptions.*

BROCKETT, *vs.* BROCKETT.

In this cause the plaintiffs having been permitted by the court to give evidence of the cohabitation of, and general reputation of a marriage, subsisting between them, the said Robert Brockett, sen'r, and Elizabeth, the mother of the plaintiffs, (as stated in defendant's 1st bill of exceptions,) and having offered in evidence a deed of bargain and sale from Robert Brockett, sen'r, and Elizabeth, called in said deed his wife, to Robert Brockett, one of the defendants, and accepted by him with the privy examination of the said Elizabeth thereto annexed, and also a paper admitted by the orphan's court of Alexandria county as a good will of the said Robert, sen'r, to pass personal property, but not good as a will of real property, (for the same hereto annexed, see page 15 of this record,) and having also offered to prove by Thomas E. Baird, a stonecutter, that, about 20 years ago, he was employed by the deceased, Robert Brockett, to cut, and did cut, on a tombstone, the following words: "Mrs. Jane Church, wife of Thomas Church, and mother-in-law of Robert Brockett, sen'r, which said Jane Church was the mother of the said Elizabeth; the plaintiffs also offered evidence tending to prove that the said Elizabeth had reason to believe that the said James Morlan was dead before her supposed marriage with the said Robert Brockett; and the plaintiffs having also offered to prove, by the Rev'd Mr. Harrison, that Dr. Muir baptized the plaintiffs at the house of Robert Brockett, sen'r, in presence of himself and said Elizabeth as their children, and by the rules of the church illegitimate children cannot be baptized; the defendants having read in evidence the proceedings in the suit of Elizabeth Brockett *vs.* Robert Brockett and others, to recover her dower, and having read the answer of Robert Brockett, junior, and other papers in this present suit depending in the chancery side of this court; and having offered to prove by Alexander Moore, a competent and credible witness, and by cross-examination of John Lawson, a witness examined by plaintiffs, that there was a reputation in the neighborhood, and in the town, that there was no actual marriage subsisting between the said Robert, sen'r, and said Elizabeth, and a general reputation that they were not man and wife, tho' living together as such, and cohabiting as man and wife; and having offered to prove by Peter Simpson, a competent and credible witness, that Robert Brockett, sen'r, did on one occasion in the year 1826, declare to witness that he was not then mar-

ried, and did not intend to be married, as he could live without being married; and having also offered to prove, by the said Peter Simpson, that he had always understood, long before the death of said Robert Brockett, that he had never been married to the plaintiffs' mother, the said Elizabeth; and having offered to prove by Levi Hurdle, a competent and credible witness, that on one occasion, in the month of December, 1825, said Robert Brockett spoke of one of his children by said Elizabeth, as the child of his housekeeper; and having also offered to prove, by John Adam, a competent and credible witness, that on one occasion, between the year 1826 and the death of said Robert Rrockett, sen'r, in the year 1829, he, the said Robert, sen'r, spoke to and addressed the plaintiff's mother, the said Elizabeth, as and by the name of Mrs. Molen; and having also offered to prove, by John Coulter, a competent and credible witness, that he was, in the year 1808 or 1809, present at the marriage of the plaintiffs' mother, the said Elizabeth, then Elizabeth Church, with one James Molin; and having offered to prove by Margaret Anderson and Sarah Moody, competent, &c., that they knew James Molen and Elizabeth Church, who both lived near Pohick Church, Fairfax county, Virginia; and that there was a general reputation in the neighborhood that they were married; and having offered to prove, by the said Sarah Moody, that said James Molen was alive in 1815, and was the same James Molen who had married Elizabeth Church; and that, in the year 1816, she told the said Elizabeth, then living with Robert Brockett, sen'r, that said Molen was alive in 1815; and having offered to prove, by the certificate of Roger Jones, &c. &c., that one James Molin was discharged from the army of the United States on the 3d day of Sept'r, 1817; the defendants, to maintain further the issue on their part, offered to prove, by Alexander Moore, a competent and credible witness, that Elizabeth, the mother of the plaintiff, had admitted to him and in his hearing, but after the death of said Robert Brockett, sen'r, that no marriage had ever existed, or been at any time solemnized between herself and the said Robert Brockett, senior, and offered to prove, by other witnesses, that the said Elizabeth had so admitted that there was no such marriage, but so admitted after the death of said Robert Brockett, senior; but the court refused to permit the defendants to give such evidence of such admissions by the said Elizabeth; to which refusal of the court the defendants except, and this their bill of exceptions is signed, sealed, and ordered to be enrolled, this 18th day of May, 1842.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]

No. 1.

Complainants' first prayer.

And thereupon the said complainants, by their counsel, prayed

the court to instruct the jury: that should the jury be satisfied, from the foregoing evidence in this cause, that Robert Brockett, sen'r, and Elizabeth Brockett, the father and mother of the plaintiffs, lived together and cohabited as man and wife, for many years, and up to the death of the said Robert Brockett, and that during that time they were reputed to be man and wife, and so acknowledged and considered by the public, and so declared themselves to be, and said that they had been actually married; and that several years before the death of the said Robert, either in the year 1814, 1815, 1816, or 1817, the said Robert declared that he was going on his way to be married to the said Elizabeth; and that they were seen at the time he so declared going together from the house where said Elizabeth resided to be married; and that they returned home to the house of said Robert, in Alexandria, upon the same, or the next day, and publicly declared to their friends and neighbors that they had been actually married by a clergyman, and the neighbours were invited upon the occasion to partake of a rejoicing, and from that time they were always regarded as man and wife, and lived together as such; and that the then plaintiffs were born previous or subsequent to said time, and were acknowledged by them to be their children, and so always treated to the death of the said Robert by him and his family; that the said Robert Brockett, junior, one of the defendants, accepted a deed from said Elizabeth and the said R. Brockett, sen'r, in which she does convey as the acknowledged wife of said Robert Brockett, sen'r; and that he visited his father and said Elizabeth; and that the three plaintiffs were christened by a regular ordained Presbyterian clergyman at the house of said Robert Brockett, in Alexandria, in the presence of said Robert and said Elizabeth, as the children of said Robert and his wife Elizabeth, and so represented at the time; and that, in the last will and testament of the said Robert Brockett, sen'r, admitted in evidence as such, he spoke of them as his children, and spoke of the said Elizabeth as his widow after his death; and that James Molen, the alledged first husband of the said Elizabeth, was not residing with her after she came to Alexandria to live; and that he never was seen in Alexandria from that time to the death of said Robert Brockett, sen'r, and never came to look after said Elizabeth—if believed, then it is competent for the jury from these facts to find that the said Robert Brockett, sen'r, was married with the said Elizabeth; but that the jury in deciding upon that fact should consider the whole evidence in the cause.

Which instruction the court gave, and the defendants by their counsel except to the giving thereof, and pray the court to sign and seal this bill of exceptions, and to cause the same to be enrolled according to the statute in such case provided, which is done accordingly this 16th day of May, 1842.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]

No. 2.

Complainants' second prayer.

And the said complainants by their counsel further prayed the court to instruct the jury, that:

If the jury find from the evidence aforesaid, that the said Robert Brockett, sen., and the mother of the plaintiffs cohabited together as man and wife from 1814, or 1815, or 1816, to the death of Robert Brockett, sen., in 1829, and were during that time reputed to be man and wife, then the presumption of law is that they were *lawfully* married *at the commencement of their cohabitation*, unless the jury shall farther find that the mother of the plaintiffs *was then and there* incapable of marrying said Brockett, by reason of the existence of a prior lawful husband; but the jury is to judge from the whole of the said evidence whether such marriage was had.

And notwithstanding the jury may find from the evidence aforesaid, that the mother of the plaintiffs was incapable of contracting a lawful marriage with Robert Brockett, sen., at the time of their first cohabitation, by reason of the continued existence of her prior lawful husband, yet, if they farther find from the evidence aforesaid, that her said prior husband has never been seen or heard of since the year 1817, then he is presumed dead after the year 1824; and if the jury further find that, from that time to the death of said Robert Brockett, in 1829, he and the mother of the plaintiffs cohabited together as man and wife, and were so reputed, then the jury may presume a lawful marriage previous to the death of said Brockett as aforesaid, and after the death of Molin, between him and his said reputed wife; and if such lawful marriage of the said Brockett and the plaintiffs' mother be found to have occurred before or after the birth of the plaintiffs, it legitimates them, provided the jury shall farther find that the plaintiffs are the children of said R. Brockett, sen. But the jury are to decide, from the whole of the evidence aforesaid, whether such marriage was had.

Which instruction the court gave, and the defendants by their counsel except to the giving thereof, and pray the court to sign and seal this bill of exceptions, and to cause the same to be enrolled according to the statute in such case provided, which is done accordingly this 16th day of May, 1842.

WM. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]

3.

Complainants' third prayer.

And the complainants by their said counsel further prayed the court to instruct the jury:

That if the jury find from the whole evidence (as it is competent for them to do) that there was a marriage between R. Brockett,

sen., and the said Elizabeth Church or Molen, and that the plaintiffs are their children, born before or after their marriage, then the plaintiffs are heirs of said Brockett, notwithstanding the said marriage of their parents was null and void, because of their mother having a prior living husband.

Which instruction the court gave as prayed, and thereupon the defendants by their counsel except thereto, and pray the court to sign and seal this bill of exceptions, and to cause the same to be enrolled according to the statute in such case provided, which is done accordingly this 16th day of May, 1842.

WM. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]

Verdict certified to the chancery court—Motion to set aside the verdict overruled.

And at a court continued and held for the District and county aforesaid, the 6th day of June, 1842, came the parties by their solicitors, and it is ordered, that the verdict rendered by the jury on the common law side of this court be certified to the court of chancery, the defendants moved the court of chancery to set aside the verdict upon the ground that the said verdict was contrary to law and the evidence, which motion the court overruled. And the complainants filed their petition for a rule on defendants to shew cause why a receiver of the rents and profits of the real estate of Robert Brockett, deceased, should not be appointed, which rule is granted, returnable on Wednesday next, the 8th of this month, which petition is as follows:

Petition for a receiver, &c.

WILLIAM BROCKETT and others,
vs.
ROBERT BROCKETT and others.
} May term, 1842.—Chancery.

To the honorable circuit court of the District of Columbia, sitting in chancery for the county of Alexandria.

Your complainants in the above cause most respectfully state in this petition, that the defendants, or some of them, have received all the rents and incomes from the estate of their deceased father, Robert Brockett, sen., which have been very considerable, and that your petitioners have never received one cent; and your petitioners further state, that the said defendants are in possession of the said estate real, and will collect and receive the rents, and your petitioners will, as they believe, and have reasons to believe, be of their due portion of the same, as they state that they have been informed and believe, that their portions will not be paid over to them, and may be totally lost to them.

Your petitioners say that they are very poor and in want of their portions of the rents, not only for their support, but to pay the costs incurred in this suit. They therefore pray your honors, that a re-

ceiver may be appointed to take charge of the said real estate, and to rent the same, and receive all rents now due, and hereafter becoming due, and that he shall dispose of the same, as your honors may direct; and further, that a referrence may be made to an auditor to ascertain the amount of the back rents and mesne profits of said real estate, so that your honors may be enabled to adjudge to your petitioners their portion of the same in such manner as may seem just and proper to your honors, and also to ascertain what advances have been made to any of the heirs of said deceased Robert Brockett, senior, and that the same may be brought into hotch potch; and your *politicians* pray for all other and further orders in the premises, to have just and equal justice done them, and to place them in every respect on a perfect equality with the other heirs of said deceased father. They also pray that the said auditor be also ordered to ascertain what waste and damage has been done to the said property by the said defendants, owing to neglect of the same; and also the difference in the value of the said property at this time, and when said Robert Brockett died, and *and* that the same be reported to your honors, together with the evidence upon which such facts are ascertained; and, as in duty bound, &c., they ever pray.

BRENT & BRENT, *for complainants.*

Sworn to before me, by William Brockett, this 23d May, 1842, one of the plaintiffs.

ISAAC KELL, sen., *Justice of the peace.*

Answer to petition—*Answer to petition.*

BROCKETT and others,
vs.
BROCKETT and others. } In chancery.

The defendants in this cause shew the following reasons why the prayer of the plaintiffs for a receiver should not be complied with:

1. Because the original bill does not ask for a receiver.

2. Because the petition is either an amendment of the original bill, or the commencement of a new suit. If it be either the defendants claim the right of being duly and in legal course summoned, and that a reasonable and legal time be allowed them to answer the same.

3. Because they are advised that a receiver will not be appointed when the matter in dispute depends on a mere legal title, except where *strong* grounds of title are shewn. In the present case, the title is disputed, and neither the court of law or chancery have expressed any opinion on the question.

4. Because there is no affidavit shewing that there is any danger of the rents being lost by the insolvency or fraud of those who have received the rents.

5. Because the legal title is *vested in the defendants* by the decree

of the court of chancery in the suit of partition made at the October term of this court in 1833, by which the real estate was divided into three parts, and the parties put into actual possession of their several portions. The appointment of a receiver would be effectually to dispossess the defendants of the property to which they have the legal title; the said legal title being in full force, never having been cancelled.

6. Because, if a receiver shall be appointed, neither the plaintiff or defendants can receive the rents, but they must remain idle in the hands of the receiver, until the final decree of the court.

7. Because the defendants who receive the rents are responsible persons, and are competent and able to pay whatever the court shall decree to be paid to the complainants.

8. Because, while complainants only lay claim to *a portion* of the real estate descended from Robert Brockett, the elder, they demand, even before any judgment or decree ascertaining and settling their rights, that a receiver of *all* the real estate descended should be appointed to the exclusion of the defendants from the enjoyment of their proportions about which no dispute is had.

9. Because, if the bill be simply one for partition among coparcencers, the appointment of a receiver is in such case unusual, unnecessary, and contrary to the rules of equity, and the practice of the court.

EDM. I. LEE, *for Robert Brockett.*
TH. SEMMES, *for defendants.*

8th June, 1842.

Decree of reference to master commissioner.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 8th day of June, 1842, came the parties by their solicitors; and it is ordered and decreed, this 8th day of June, 1842, that this case be referred to Reuben Johnson, a master commissioner in chancery, to ascertain the rents and mesne profits of the real estate of deceased Robert Brockett, from the time of his death, with interest upon the same, and also the amount of taxes and necessary repairs upon the same, to the next term of this court; and also to ascertain the amount of property advanced to any of the defendants or complainants in the lifetime of the said deceased, together with the rents and mesne profits of the same since the death of the said deceased, and also the necessary repairs upon the same, and by whom and to whom paid, and that said master commissioner do report the same to this court at the same time; and that he shall give reasonable notice of the time and place of his acting under this order to such complainants and defendants as reside within the District of Columbia, and to the solicitors and counsellors of such as reside beyond the jurisdiction of said District; and it is further ordered, that said master commissioner shall have power to direct subpœnas to issue for witnesses

to appear before him; and that subpœnas shall be issued by the clerk of this court.

Decree for partition.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 10th day of June, 1842, came the parties aforesaid by their solicitors; and this cause having been set down for hearing according to the written agreement of counsel on file, and all the proceedings being read by the court, it is, upon full consideration of all the said proceedings and evidence, ordered, adjudged, and decreed, that partition be made between the heirs-at-law of Robert Brockett, deceased, as found by the verdict rendered on the issue ordered in this cause, of all the real estate whereof said deceased Robert Brockett died seized in fee simple, according to the provisions of the statute regulating the descent of intestates' estates; that is to say: that to each of the said heirs-at-law of said Robert Brockett, sen'r, there be assigned, in severalty, his or her legal share or portion of said estate, according to the statute of descents aforesaid in force in Alexandria county and District of Columbia; to have and to hold his or her said part in fee simple; and that the part of each of said heirs be laid off with convenient certainty of description; and that, for the purpose of making said partition, William H. Irwin, John D. Harrison, and Dennis Johnston, or any two of them, be appointed commissioners, who shall, in making the allotment aforesaid to each of said heirs, so divide the property that each heir shall have his just share of said estate in value, as near as may be; in case the said property be found incapable of such just division in value, then the said commissioners are hereby directed to report to this court the sum or sums of money which shall be paid for of partition to such of said heirs as may have his part estimated as of inferior value; and the said commissioners in such case shall expressly report by which, and to which of said heirs, the said sum or sums of money for of partition shall be paid; and in case of any of the said heirs of Robert Brockett, dec'd, has received from him in his life time any real estate by way of advancement, and shall choose to come into partition with the other parceners, then such real estate so advanced shall be brought into hotch potch with the estate descended upon said heirs of Robert Brockett, sen'r; and that the said commissioners do make a full report of their proceedings in the premises to this court by the first day of the next term of this court.

Referred to master com. Johnston.

And it is further ordered and decreed that it be referred to Reuben Johnston, master commissioner, to ascertain the annual value and the annual rents and profits of all and every parcel of the real estate whereof Robert Brockett, sen'r, died seized, from the time of his death hitherto, as well as the annual value of any real estate

which may have been advanced by said R. Brockett, sen'r, to any of said heirs of his body from the time of his death hitherto; and that he further report to whom said rents and profits were paid during each year, when any part of said property was rented out, and by which of said heirs, and for how long, any portion of said real estate was used, occupied, and possessed by any of said heirs, and which of them; and also whether any part of said real estate has been wasted through the neglect or mismanagement of any of the defendants, and which of them, and to what amount in value; and that said commissioner shall further report as to the amount of credits which the defendants or any of them are entitled for the necessary repairs made on said property or any part thereof, or for taxes paid thereon; and that said commissioner be authorized to take evidence in this behalf, and for that purpose the clerk of this court shall, at the instance of said master commissioner, issue subpœnas for witnesses returnable before said master commissioner; and it is further ordered that notice be given of the proceedings to be had under this order by both the commissioners to make partition, and by the master commissioner, by serving ten days previous notice upon all the defendants who are heirs-at-law of said Robert Brockett, deceased, of the time and place of proceeding to execute this order respectively, and that said notice may be served on the solicitors of the defendants; and it is further ordered, that the order of this court passed on the 8th inst. be rescinded; and that William Devaughn be, and he is hereby, appointed receiver, upon executing a bond approved by one of the judges of this court in the penalty of ($500) five hundred dollars; and as such receiver he is hereby empowered to collect the one-half of all rents which may hereafter accrue on account of any part of said real estate; and that his receipt to each tenant shall be good for the one-half of such rent as may hereafter fall due; provided, however, that in case the defendants, or any of them, shall previously to the bonding of said receiver give bond, to be approved by any judge of this court, conditioned to pay to the complainants one-half of all rents hereafter falling due by reason of the renting out of said real estate in case a final decree shall be rendered in favor of said complainants, according to the allegations in said bill of complaint, then there shall be no receiver appointed as aforesaid; and in case said tenants shall refuse to pay said receiver the one-half of said rents, as hereby ordered, then, upon service of a copy of this order upon said tenant or tenants so refusing, the court will consider said tenant or tenants as guilty of contempt of court, in case he or they shall longer refuse to obey this order.

William Devaughn appointed receiver, &c.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 26th day of November, 1842, came the parties aforesaid by their solicitors, and the death of the

deft., Walter Ann Brockett, is suggested, and leave is given to make her infant children defendants; and on the complainant's motion, it is ordered and decreed that Wm. Devaughn be, and he is hereby, appointed by the court, with the consent of the complainants, (and the defendants' counsel stating in open court that he did not object to the same,) receiver of all the rents now due and becoming due from the several tenants of the real estate of the deceased Robert Brockett, upon the said Devaughn's executing a bond to the United States, approved by one of the judges of the court, in the penalty of one thousand dollars, faithfully to account for such rents; and the said receiver is hereby empowered to collect the same, and to rent out the said real estate; and the said William Devaughn is further empowered and directed to pay to each of the said complainants, and to each of the said defendants, found by verdict of the jury to be heirs of said deceased, the just portions of the said rents coming to each heir, upon his, or her, or their legal representatives, giving to said receiver bonds to refund the same, if necessary, with interest, upon the final decision of this cause. It is further decreed that the order made in this cause relative to the said receiver at May term, 1842, be, and is hereby, rescinded; and it is further ordered, that the said receiver report to this court all the proceedings had and taken by him in the premises. Edward Burchell is appointed guardian ad litem of the infant children of Walter Ann Brockett, to defend their interests in this suit.

Decree.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 10th day of May, 1843, the death of Walter Ann Brockett, one of the defendants, and wife of Wm. Ball, having been suggested upon the record, and Mary Elizabeth Ball and Wm. W. Ball, infant children and heirs of said Walter Ann, having appeared and filed an answer in this case by Edward Burchell, their guardian ad litem, appointed by this court at October Term, 1842, and this case having been submitted upon the bill of complaint, the answer of the defendants, the replications thereto, the evidence and depositions filed in the case, the verdict of the jury upon the issues tried and found at law by order of this court, the reports of the commissioners and master commissioner in chancery, for a final decision and decree—

It is ordered and decreed, upon this 10th day of May, 1843, that the complainants are the legitimate children and heirs-at-law of Robert Brockett, deceased, as charged by them in their bill of complaint in common with Robert Brockett, jr., son of said deceased, Mary Elizabeth Ball and William W. Ball, only children and heirs of Walter Ann Brockett, deceased, wife of William Ball, and daughter of said deceased Robert and Thomas R. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, children and heirs of Margaret Brockett, deceased, wife of said Wilson, de-

ceased, and daughter of said deceased Robert; and that, as such legal heirs and children, the said complainants are entitled to receive each, per stirpes, the one-sixth part of the deceased Robert Brockett's estate, both real, mixed, and personal, and that they were so entitled at the time of the death of the said Robert.

It is also further ordered and decreed, upon this day aforesaid, that the report made to this court by the commissioners appointed to value and divide the real estate of said deceased Robert, and the decisions in manner and form as made by them, as well as the report made to this court by the master commissioner Reuben Johnston, be, and the same is hereby received, approved, ratified, and confirmed; and that partition of said real estate is made between the complainants and defendants according to the said commissioner's report; and that the said William Brockett, Elizabeth Brockett, and Annabella Brockett, the complainants, do forever hereafter hold and possess the several claims and dividends of the said real estate to them assigned according to the report of the said commissioners filed in this cause; that is to say, the said complainants, their heirs and assigns forever, one-sixth part each in severalty, or parcenary, as the same is described in the said commissioner's report; and the said Robert Brockett, junior, the said Mary Elizabeth Ball and William W. Ball, the infant heirs of the said deceased Walter Ann Brockett, and the said Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, heirs and children of deceased Margaret Brockett aforesaid, the defendants, do also, forever hereafter, hold the several shares and dividends to them assigned upon the terms and conditions, and according to the said commissioner's report, in severalty or in parcenary, as the same is described in the said report.

And it is further ordered and decreed that the complainants and assigns do recover from the said defendants the following sums of money in manner and form hereafter specified, and in conformity to the report of the master commissioner aforesaid; that is to say, that the said Robert Brockett, jr., shall pay unto the complainants, within four months from the 10th day of May, 1843, the sum of $3,344 20 cents with interest from this time, being the balance due to the complainants, after deducting the sum of $663\frac{75}{100}$ from the reported sum of $4,007\frac{95}{100}$, stated in said last mentioned report; and which sum so deducted was claimed by said Robert as an additional allowance to be made to him; and that the said Mary Elizabeth Ball and William W. Ball, shall pay unto the complainants within the said time, the sum of $481 90, in conformity with the said master commissioner's report, with interest from this date; and that the said Thomas Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, shall pay to the said complainants, within the said time, the sum of $1386 53 cents, in conformity with the said last mentioned report, with interest from this date.

It is also further ordered and decreed, in conformity with the

report of the said commissioners who divided the real estate aforesaid, that the several sums of money to be paid by the different heirs to some of the others, so as to equalize the said shares, shall be paid as follows: that of the sum allotted to be paid by William Brockett he shall pay, in cash, to said Mary Elizabeth Ball and William W. Ball, children of the said Walter Ann, deceased, the sum of $91\frac{67}{100}$ as in said report directed, and to the aforesaid children of the said deceased Margarett Brockett, the sum of $66\frac{66}{100}$ as part of the sum of $91\frac{67}{100}$ allowed them in said report; and that the balance of the said $91\frac{67}{100}$, being the sum of $25\frac{01}{100}$, shall be paid to them by the said Robert Brockett, jr., out of the money directed to be paid by him; and the balance of $33\frac{32}{100}$ directed to be paid by the said Robert, shall be paid by him to Elizabeth Brockett, as a part of the amount allowed her in said report; and that the said Annabella Brockett shall pay the sum of $8 33, directed to be paid by her in said report, to said Elizabeth Brockett, to make up the sum allowed the said Elizabeth.

It is also further ordered and decreed upon this said 10th day of May, 1843, that, in default of the aforesaid several sums of [money] being paid as aforesaid, that the complainants, and the parties to whom the same are ordered and decreed to be paid as aforesaid, may take out writs of execution as in ordinary cases against said defendants who are of lawful age, and parties decreed to pay the same, or against their goods and chattels, lands and tenements, for the amount so decreed to be paid with all costs, the same as could be done in any other case, to enforce the payment of the said several sums of money and costs hereby ordered and decreed to be paid, and against the goods and chattels, lands and tenements, only of said Thomas; and that the same shall be directed to the marshal of the District of Columbia as in other cases, who is hereby ordered to execute the same as in other cases, and to pay over the money or moneys, when made, to the complainants or parties interested, or to their legal representatives.

It is also further ordered and decreed that the said defendants and the said complainants shall pay equally the costs incurred in this case.

And leave is reserved to the infants defendants, respectively, to shew cause against this decree at any time within six months after they shall respectively attain the ages of majority.

From which decree the defendants pray an appeal to the Supreme Court of the United States, which is granted.

Answer of the infant heirs of Walter Ann Brockett.—*Answer of infant heirs of Walter Ann Brockett.*

WM. BROCKETT and others,
vs.
ROBERT BROCKETT and others. } In chancery.

Circuit court of the District of Columbia for the county of Alexandria.

In this case, Mary Elizabeth Ball and William W. Ball, infant

children of, and heirs to, Walter Ann Brockett, deceased, come here into court by Edward Burchell, their guardian ad litem, appointed by the court, and for answers to the bill of the complainants, saith: that he, the said Burchell, knows nothing of the matters and things stated in said bill of complainants, but that the said Mary E. and William W. are infants of tender years, and this respondent asks that the court will hold the complainants to strict proof of all the averments and charges contained in the bill of complaint, and that your honors will strictly guard the rights and interests of the said minors.

This respondent, not knowing any of the matters and things contained in said bill, denies the same, and prays to be hence dismissed with his costs; and, as in duty bound, will ever pray, &c.

E. BURCHELL.

Report of commissioners to divide the real estate of R. Brockett, deceased.—*Report of the commissioners appointed to divide the real estate of Robert Brockett, deceased.*

Partition of the real estate of Robert Brockett, senior, deceased, among his heirs-at-law, in the circuit court in chancery for Alexandria county, in the District of Columbia, in the suit of William Brockett and others vs. Robert Brockett and others. May term, 1842, viz:

One undivided half of a two-story brick tenement and lot of ground, on the south side of Prince street, in the town of Alexandria; beginning at the intersection of Prince and Alfred streets, running thence westwardly, on the line of Prince street, one hundred and twenty-three feet 5 inches to an alley; thence southwardly on said alley, and parallel to Alfred street, 176 feet 7 inches; thence eastwardly, and parallel to Prince street 123 feet 5 inches to Alfred street; thence northwardly, on Alfred street, to the beginning, subject to a ground rent of $66 67. Also, the sum of ninety-one dollars and 67 cents to be paid by the other heirs hereinafter mentioned to Walter Ann Brockett, one of the parties in the said proceedings mentioned; to hold the same to the said Walter Ann Brockett, heir heirs and assigns forever.

$1,250 00 real estate
91 67 cash

$1,341 67

One undivided half of a two-story brick tenement and lot of ground on the south side of Prince street, in the town of Alexandria; beginning at the intersection of Prince and Alfred streets, running thence westwardly, on the line of Prince street, one hundred and twenty-three feet five inches to an alley; thence southwardly, on the said alley and parallel to Alfred street, 176 feet 7 inches; thence eastwardly, and parallel to Prince street, 123 feet 5 inches to Alfred street; thence northwardly to the beginning, subject to a ground rent of $66 67. Also, the sum of ninety-one dol-

lars 67 cents to be paid by the other heirs as hereinafter mentioned to Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, heirs of Margaret Brockett, deceased, also parties to the said proceedings; to hold the same to the said Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, their heirs and assigns forever.

Real estate - - -	$1,250 00
Cash - - - -	91 67
	$1,341 67

The south half of a lot of ground with two tenements thereon, on the north side of Queen and east side of Washington street, in the town of Alexandria, beginning at the intersection of said streets, running thence north on the line of Washington street 83 feet to an alley 10 feet 6 inches wide; thence east, on the line of said alley, and parallel to Queen street, 60 feet; thence west, on the line of Queen street, to the beginning.

Also, one-half square of ground on the north side of Pendleton street, in said town, beginning at the intersection of Pendleton and St. Asaph streets, running thence on Pendleton street eastwardly to Pitt street; thence northwardly, on the line of Pitt street, 176 feet 7 inches; then westwardly to St. Asaph street; thence southwardly, 176 feet 7 inches, to the beginning, subject to the payment of one hundred and fifty-eight dollars 33 cents, to be distributed between the heirs of Margaret Brockett, Elizabeth Brockett, and Walter Ann Brockett, as herein stated, to William Brockett, one of the parties in the said proceedings mentioned; to hold the same to the said William Brockett, his heirs and assigns forever.

Real estate - - -	$1,500 00
	158 33
	$1,341 67

The north half of a lot of ground with two tenements thereon, on the north side of Queen and east side of Washington street, in the town of Alexandria, beginning at the intersection of said streets, running thence north, on the line of Washington street, 83 feet to an alley 10 feet 6 inches wide; thence east, on the line of said alley and parallel to Queen street, 60 feet; thence south, parallel to Washington street, 83 feet to Queen street; thence west, on the line of said street, to the beginning. Also, a lot of ground on the west side of Washington between Queen and Princess streets, upon which Robert Brockett's dwelling now stands, fronting on Washington street feet, and running back feet, subject to the payment of $58 33 to the heirs of Margaret Brockett, Elizabeth Brockett, and Walter Ann Brockett, as herein stated, to Robert Brockett, one of the parties in the said proceedings mentioned; to

hold the same to the said Robert Brockett, his heirs and assigns forever.

Real estate - - -	$1,400 00
	58 33
	$1,341 67

A tenement and lot of ground in the town of Alexandria, beginning on the east side of a 20 feet alley, running from Queen to Princess streets, between Union and Water streets, at the line of Richard Conway and Robert Adams's heirs, running thence with said line eastwardly, and parallel to Queen street, 52 feet; thence northwardly, parallel to Union street, 23 feet 6 inches; thence northwardly, and parallel to Princess street, 52 feet, to the aforesaid alley; thence southwardly on said alley to the beginning.

Also, one other lot of ground in said town, lying on Fayette alley, beginning on the north side of said alley 30 feet east of Water street; running thence eastwardly, on the line of said alley, 90 feet; thence northwardly, parallel to Water street, 65 feet 7 inches; thence westwardly, parallel to said alley, 90 feet; thence southwardly, and parallel to Water street, to the beginning.

Also, one tenement and lot of ground on the east side of Washington street, beginning 156 feet 7 inches to the north of Queen street, running thence northwardly, on Washington street, 20 feet; thence eastwardly, parallel to Queen street, 175 feet to an alley 10 feet one inch wide; thence southwardly, with said alley, and parallel to Washington street, 20 feet; thence westwardly, parallel to Queen street, to the beginning, subject to the payment of eight dollars and 33 cents to the heirs of Margaret Brockett, Elizabeth Brockett, and Walter Ann Brockett, as herein stated, to Annabella Brockett, one of the parties in said proceedings; to hold the same to the said Annabella Brockett, her heirs and assigns forever.

Real estate - - -	$1,350 00
	8 33
	$1,341 67

One lot or quarter square of ground with the improvements, lying on the north side of Duke and west side of Henry streets, in the town of Alexandria, beginning at their intersection, and running thence on the line of Henry street northwardly 176$\frac{7}{12}$ feet; thence westwardly, parallel to Duke street, 123 feet 5 inches; thence southwardly, and parallel to Henry street, 176 feet 7 inches to Duke street; thence to the beginning, subject to a rent charge of $20 per annum.

Also, a lot or quarter square of ground with the improvements, lying on the south side of Prince street, east side of Fayette street, in said town, beginning at their intersection, and running thence

eastwardly on the line of Prince street, 123 feet 5 inches; thence south, and parallel to Fayette street, 176 feet 7 inches; thence westwardly, and parallel to Prince street, 123 feet 5 inches; thence on the line of Fayette street, to the beginning, subject to a rent charge of $20 per annum. And the sum of forty-one dollars and sixty-seven cents to be paid by the other heirs as herein mentioned, to Elizabeth Brockett, one of the parties in the said proceedings mentioned; to hold the same to the said Elizabeth Brockett, her heirs and assigns forever.

Real estate - - -	$1,300 00
Cash - - - -	41 67
	$1,341 67

The remaining part of said estate being one-half square of ground lying on the north side of Cameron street, in said town, beginning at the intersection of Cameron and Columbus streets, running thence, and binding on Cameron street, to Alfred street; thence northwardly, on the line of Alfred street, 176 feet 7 inches; thence parallel to Cameron eastwardly to Columbus street, then eastwardly on the line of Columbus street to the beginning, subject to a ground rent of $83 33. This property has been re-entered upon by Mr. John Lloyd for arrears of rent. And we have awarded to William Brockett, Elizabeth Brockett, and Annabella Brockett, that half of said lot at the intersection of Alfred and Columbus, binding on Columbus 176 feet 7 inches, and on Cameron 123 feet 5 inches; and we have allotted to Robert Brockett, Walter Ann Brockett, Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, the heirs of Margaret Wilson, the other half of said lot, being that part at the intersection of Cameron and Alfred streets, binding on Alfred 176 feet 7 inches, and on Cameron 123 feet 5 inches.

JOHN D. HARRISON.
WILLIAM H. IRWIN.

Master commissioner Johnston's report.

WILLIAM BROCKETT and others, against ROBERT BROCKETT and others. } In chancery.

The undersigned, commissioner, who was directed by an order of the honorable the circuit court of the District of Columbia, for Alexandria county, made in the above-named cause at May term, 1842, to ———.

1st. Ascertain the annual value, and the annual rents and profits of all and every parcel of the real estate whereof Robert Brockett, sen., died seized from the time of his death hitherto, as well as the annual value of any real estate which may have been advanced by

said R. Brockett, sen., to any of said heirs of his body from the time of his death hitherto; and that he further report,

2d. To whom said rents and profits were paid, during each year, where any part of said property was rented out.

3d. By which of said heirs, and for how long, any portion of said real estate was used, occupied, and possessed.

4th. Whether any part of said real estate has been wasted through the neglect or mismanagement of any of the defendants, and which of them, and to what amount in value.

5th. To report as to the amount of credits which the defendants or any of them are entitled to for the necessary repairs made on said property, or any part thereof, or for taxes paid thereon—respectfully reports:

That he proceeded to execute the said order on the 27th day of July last, and continued the proceedings, from day to day, until the 3rd of August, and kept his report open until the first instant, of which the defendants or their solicitors had due notice, as will appear by the written notices, with the returns thereon, which accompany this report; none of the defendants attended, excepting William Ball, nor their solicitors.

The undersigned, as authorised by said order, proceeded to take numerous depositions of persons who have been tenants of said property since the death of Robert Brockett, sen'r, for the purpose of ascertaining the *the* annual value, and the rents and profits thereof, from the time of his death hitherto, as well its condition as to repairs and dilapidation. For the greater part of the time, and as to most of the property, the actual rents have been fully proven; and in those cases where the proofs are not full and continuous, a just estimate has been endeavoured at, by averages deduced from the proofs as far as they go. The results are shown in the annexed statements, marked A, B, C, D; and the depositions are also annexed, (No. 1.)

It appears that, from the time of the death of Robert Brockett, sen'r, on the 29th of March, 1829, until the partition of his real estate among the defendants at May term, 1834, of this court, the rents of all the said real estate were received by his administrator, the defendant Robert Brockett, jr. A separate account of the rents thus collected is given in statement A, which also shows the credits to which he is entitled against the same, as far as they have been brought to the knowledge of the undersigned.

From the time of the partition, Robert Brockett, jr., the heirs of Margaret Wilson, deceased, and William Ball and wife, are charged in seperate statements (B, C, D,) with the rents and profits of their respective dividends, and the proper credits are given on each account. In the credit $35 43 allowed for repairs to Wm. Ball and wife, nothing is embraced which is not of a necessary and permanent nature.

No statement of the *annual value*, as distinguished from rents

and profits, is given, as it is believed that the latter, in *in* connexion with the charges for deterioration or waste, is a full and fair representative of the former.

None of the heirs of Robert Brockett, sen'r, received from him any advancement in real estate, excepting the defendant Robert Brockett, jr., to whom he conveyed the lot on Washington street, in Alexandria, which has ever since been occupied by him. The annual value of this lot, estimated at $40 a year, is charged to him in statement A and B.

The only piece of real estate, which has been in the occupancy and use of any of the heirs of R. Brockett, is the brickyard lot which was assigned to R. Brockett, jr., in the partition among the defendants, and has been ever since his father's death used by him. The estimated annual value of this lot, $30 a year, is charged to him in statement A and B.

The foregoing remarks relate to the first, second, third, and fifth points referred. As to the fourth point, namely, the waste committed or suffered by any of the defendants, it was found necessary to have the property inspected by builders, and their depositions taken. This was done by Alexander Veitch and Philip B. Vernon, both practical carpenters and house builders; and their depositions accompany this report, from which the amount of waste or dilapidation sustained by each piece of property, over and above the cost of necessary and seasonable repairs, may be gathered, as estimated by them. These persons were, also, well acquainted with most, if not all, of the real estate of R. Brockett, sen'r, from the time of his decease to the present time, as they testify. To apportion the liability for this waste among the parties who have had the property in charge at different periods, is impossible, nor does it seem to be necessary, as no doubt the commissioners who made the division among the defendants, in 1834, took into consideration the then condition of each piece of property, and estimated its value as it stood, and divided accordingly. The undersigned, therefore, merely reports upon this point, that the portions held by the defendants respectively appear by the evidence to have been wasted in this manner as follows, viz:

Margaret Wilson's heirs' portion - - - -	$450
William Ball & wife's portion - - - -	250
Robert Brockett's portion - - - - -	430

The evidence of P. B. Vernon, it will be observed, is confined to the wood work in the houses; while that of Alexander Veitch embraces both wood work and masonry; the fullest evidence has been adopted, particularly as the higher estimates are borne out by the lower ones of P. B. Vernon, as far as they go. In connexion with this point, the deft., William Ball, desires the commissioner to report the accompanying certificates of Alexander Moore and George Drinker, and affidavits of George Davis, Margaret Byrne, and John Adam; which is done with the remark that they appear to be rele-

said R. Brockett, sen., to any of said heirs of his body from the time of his death hitherto; and that he further report,

2d. To whom said rents and profits were paid, during each year, where any part of said property was rented out.

3d. By which of said heirs, and for how long, any portion of said real estate was used, occupied, and possessed.

4th. Whether any part of said real estate has been wasted through the neglect or mismanagement of any of the defendants, and which of them, and to what amount in value.

5th. To report as to the amount of credits which the defendants or any of them are entitled to for the necessary repairs made on said property, or any part thereof, or for taxes paid thereon—respectfully reports:

That he proceeded to execute the said order on the 27th day of July last, and continued the proceedings, from day to day, until the 3rd of August, and kept his report open until the first instant, of which the defendants or their solicitors had due notice, as will appear by the written notices, with the returns thereon, which accompany this report; none of the defendants attended, excepting William Ball, nor their solicitors.

The undersigned, as authorised by said order, proceeded to take numerous depositions of persons who have been tenants of said property since the death of Robert Brockett, sen'r, for the purpose of ascertaining the *the* annual value, and the rents and profits thereof, from the time of his death hitherto, as well its condition as to repairs and dilapidation. For the greater part of the time, and as to most of the property, the actual rents have been fully proven; and in those cases where the proofs are not full and continuous, a just estimate has been endeavoured at, by averages deduced from the proofs as far as they go. The results are shown in the annexed statements, marked A, B, C, D; and the depositions are also annexed, (No. 1.)

It appears that, from the time of the death of Robert Brockett, sen'r, on the 29th of March, 1829, until the partition of his real estate among the defendants at May term, 1834, of this court, the rents of all the said real estate were received by his administrator, the defendant Robert Brockett, jr. A separate account of the rents thus collected is given in statement A, which also shows the credits to which he is entitled against the same, as far as they have been brought to the knowledge of the undersigned.

From the time of the partition, Robert Brockett, jr., the heirs of Margaret Wilson, deceased, and William Ball and wife, are charged in seperate statements (B, C, D,) with the rents and profits of their respective dividends, and the proper credits are given on each account. In the credit $35 43 allowed for repairs to Wm. Ball and wife, nothing is embraced which is not of a necessary and permanent nature.

No statement of the *annual value*, as distinguished from rents

and profits, is given, as it is believed that the latter, in *in* connexion with the charges for deterioration or waste, is a full and fair representative of the former.

None of the heirs of Robert Brockett, sen'r, received from him any advancement in real estate, excepting the defendant Robert Brockett, jr., to whom he conveyed the lot on Washington street, in Alexandria, which has ever since been occupied by him. The annual value of this lot, estimated at $40 a year, is charged to him in statement A and B.

The only piece of real estate, which has been in the occupancy and use of any of the heirs of R. Brockett, is the brickyard lot which was assigned to R. Brockett, jr., in the partition among the defendants, and has been ever since his father's death used by him. The estimated annual value of this lot, $30 a year, is charged to him in statement A and B.

The foregoing remarks relate to the first, second, third, and fifth points referred. As to the fourth point, namely, the waste committed or suffered by any of the defendants, it was found necessary to have the property inspected by builders, and their depositions taken. This was done by Alexander Veitch and Philip B. Vernon, both practical carpenters and house builders; and their depositions accompany this report, from which the amount of waste or dilapidation sustained by each piece of property, over and above the cost of necessary and seasonable repairs, may be gathered, as estimated by them. These persons were, also, well acquainted with most, if not all, of the real estate of R. Brockett, sen'r, from the time of his decease to the present time, as they testify. To apportion the liability for this waste among the parties who have had the property in charge at different periods, is impossible, nor does it seem to be necessary, as no doubt the commissioners who made the division among the defendants, in 1834, took into consideration the then condition of each piece of property, and estimated its value as it stood, and divided accordingly. The undersigned, therefore, merely reports upon this point, that the portions held by the defendants respectively appear by the evidence to have been wasted in this manner as follows, viz:

Margaret Wilson's heirs' portion - - - -	$450
William Ball & wife's portion - - - -	250
Robert Brockett's portion - - - - -	430

The evidence of P. B. Vernon, it will be observed, is confined to the wood work in the houses; while that of Alexander Veitch embraces both wood work and masonry; the fullest evidence has been adopted, particularly as the higher estimates are borne out by the lower ones of P. B. Vernon, as far as they go. In connexion with this point, the deft., William Ball, desires the commissioner to report the accompanying certificates of Alexander Moore and George Drinker, and affidavits of George Davis, Margaret Byrne, and John Adam; which is done with the remark that they appear to be rele-

vant to the matters referred, but that the claim which they are designed to sustain against the defendant Robert Brockett, jr., for rent, it is fair to presume, was settled by the first partition. (See No. 2.) Another description of waste permitted by the defendants, the heirs of Margaret Wilson, is their suffering the arrears of ground rents to accumulate upon the property on Prince and Fayette streets, and Duke and Henry streets, and upon the property on Cameron, Alfred, and Columbus streets, viz:

On the property on Prince and Fayette streets, the rent charge of $20 a year is in arrear from the 1st January, 1836, which, on the 1st of October, 1842, would amount to 6¾ years, or - - - - - -	$135	00
On the property on Duke and Henry streets, the same arrears have accumulated, say - - -	135	00
On the property on Columbus, Cameron, and Alfred streets, the holder of the rent charge has re-entered for $274 42 arrears up to the 1st of January, 1842 -	274	42
Add for 9 months ground rent on same property, from 1st January to 1st October, 1842, at $83⅓ a year -	62	50
	606	92
One-half of this sum is - - - - - -	$303	46

After the closing of the evidence herein before referred to, but before the closing of the report, the defendant Robert Brockett, jun., produced an account of expenditures upon that part of the property allotted to him in the first partition for repairs, amounting to $454 51; which is annexed to this report, marked No. 3. Of this account, items amounting to $446 97 are sustained by the proofs which will be found with the account; the simple interest on this sum from 1st September, 1834, till 1st October, 1842, 8 years and one month, is $216 78, making $663 75; the compound interest is, for the same time, $268 95, making $715 92.

If these credits be allowed, the proper deduction must be made from the second statement of rents received by him, marked B.

A summary of the charges, allowing the credits mentioned, will be found annexed.

All which is respectfully submitted.

R. JOHNSTON, *M. C.*

Alexandria, 2d November, 1842.

Summary.

	Without interest.	At simple interest.	Compound interest.
Robert Brockett, jun.—			
To balances, as per statement A – – –	$1,599 91	$2,608 42	$2,901 66
To do do do B – – –	1,416 64	1,731 40	2,084 51
To ½ of waste – – – – –	215 00		
	3,231 55	4,339 82	4,986 17
By ½ of repairs – – – – –	223 48	331 87	357 96
	3,008 07	4,007 95	4,628 21
William Ball and wife—			
To balances, as per statement C – – –	300 06	356 90	365 87
To ½ of waste – – – – –	125 00	125 00	125 00
	425 06	481 90	490 87
Margaret Wilson's heirs—			
To balances, as per statement D – – –	662 94	858 07	884 72
To ½ waste – – – – –	225 00		
To ½ arrears of ground rents, $303 46 – –	528 46	528 46	528 46
	1,191 40	1,386 53	1,413 18

Statement A, account of rents, &c., referred to in commissioner's report.

A.

Statement of rents collected by Robert Brockett, jun., from the death of R. Brockett, sen., to the time of the partition, say from 1st April, 1829, to 1st May, 1834.

From House on Brockett's alley, 5 1-12 years, at $60 per year – –	$305 00
Do on Prince and Alfred streets, 5 1-12 years, at $180 per year –	915 00
Do on Prince and Fayette streets, 3 11-12 years, at $72 per year –	282 00
Do on Prince and Fayette streets, 1 2-12 years, at $60 per year –	70 00
Do on Duke and Henry streets, 5 1-12 years, at $48 – –	244 00
6 houses, Columbus, Cameron, and Alfred, say $36 each, is $216 for all, 5 1-12 years – – – – – – – –	1,098 60
House, corner of Washington and Queen streets, 4 years, at $86 –	344 00
Do do do 1 1-12 years, at $96 –	104 00
House, 2d in same row, 5 1-12 years, at $50 – – – –	254 16
House, 3d in same row, 5 1-12 years, at $50 – – – –	254 16
House, 4th in same row, 5 1-12 years, at $48 – – –	244 00
House next to Mrs. Fowles, Washington street, 5 1-12 years, at $60 –	305 00
Vacant lot on Fayette alley, balance – – – – –	11 67
Brick yard lot, 5 1-12 years, at $30 – – – – –	152 50
Lot on Washington street, conveyed in life-time of father, 5 1-12 years, at $40	203 33
	$4,786 82
One-half this sum is – – – – – – – –	$2,393 41

STATEMENT—Continued.

Simple interest on – – – – – –	$2,393 41 is		
	1,502 58		
	$3,895 99		
Compound interest on – – – – –	2,393 41 is		
	2,022 03		
			$4,415 54
The said R. Brockett, jun., is entitled to the following credits against the foregoing, viz:			
For taxes of 1829 – – – – – –		$93 67	
1830 – – – – – –		100 92	
1831 – – – – – –		100 92	
1832 – – – – – –		106 60	
1833 – – – – – –		113 10	
1834 – – – – – –		121 80	
			637 01
For 5 years ground rent of property on Prince and Fayette, and Duke and Henry streets, say from 1st January, 1829, to 1st January, 1834, at $40 a year			200 00
For 5 years ground rent of property on Prince and Alfred streets, say from 15th September, 1828, to 15th September, 1833, at $66 66 2-3 a year –			333 33
For 5 years ground rent of property on Columbus, Cameron, and Alfred streets, say from 1st January, 1829, to 1st January, 1834, at $83 33 a year –			416 66
One-half of this sum – – – – – – – –			1,587 01
		Is	793 50
On this sum of – – – – –	$793 50		
Simple interest, is – – – –	494 07		
		$1,287 57	
On this sum of – – – – –	$793 50		
Compound interest, is – – – –	720 28		
		1,513 78	
Balance without interest – – – – –		1,599 81	
Balance at simple interest – – – – –		2,608 42	
Balance at compound interest – – – –		2,901 66	

B—Referred to in master commissioner's report—statement of rents, collected by R. Brockett, jun., from the real estate, &c.

B.

Statement of rents collected by Robert Brockett, jun., from the real estate of his father, allotted to him in the partition, say from 1st May, 1834, to 1st October, 1842.

From house on Brockett's alley, 1 11-12 years, at $60 a year – –	$115 00
Do do do 6 6-12 years, at $48 a year – –	312 00
From house on Washington and Queen streets, 8 5-12 years, at $96 a year –	808 00
From second house in same row, 8 5-12 years, at $50 a year – –	420 83
From third house in same row, 4 11-12 years, at $50 a year – – –	245 84
From third house in same row, 3 6-12 years, at $60 a year – – –	210 00
From fourth house in same row, 8 5-12 years, at $48 a year – – –	404 00
Brick yard lot, 8 5-12 years, at $30 – – – – – –	252 50
Lot on Washington street, conveyed by father in his life-time, 8 5-12 years, at $40 – – – – – – – – – –	336 67
	$3,104 84

STATEMENT—Continued.

The said Robert Brockett is entit.ed to credits against the foregoing, as follows:		
For taxes of 1835	$41 00	
1836	41 00	
1837	29 00	
1838	25 00	
1839	31 25	
1840	35 00	
1841	35 00	
1842	34 30	
		271 55
Balance		$2,833 29
One-half of balance		1,416 64
On which half the balance of simple interest is	$314 76	
Making a total of	1,731 40	
And the balance of compound interest is	$353 11	
Making a total of	2,084 51	

C—Statement of rents received by William Ball.

C.

Statement of rents received by and for William Ball and wife, from property allotted to her in partition.

From property corner Prince and Alfred streets, 8 5-12 years, at $175 a year		$1,472 92
Vacant lot on Fayette alley, nett balance		45 40
		$1,518 32
One-half this sum		759 16
Simple interest on the items of this $759 16, is	$164 66	923 82
Compound interest on ditto, is	187 80	946 96
Balance exclusive of interest	300 06	
Balance at simple interest	356 90	
Balance at compound interest	365 87	
The said William Ball and wife are entitled to the following credits against the above, viz:		
For taxes for 1835	$45 10	
1836	45 10	
1837	31 32	
1838	25 00	
1839	31 25	
1840	35 00	
1841	35 00	
1842	35 00	
		$282 77
For 9 years ground rent of property on Prince and Alfred streets, at $66 66 a year, say from 15th September, 1833, to 15th September, 1842	$600 00	
For sundry bills of repairs, patching roof, mending brick work, &c.	35 43	918 20
One-half of this sum		459 10
Simple interest on the items of this $459 10, is	$107 82	$566 92
Compound interest on ditto, is	121 99	581 09

STATEMENT—Continued.

D—Margaret Wilson's heirs.

D.

Statement of rents collected from that portion of the real estate of R. Brockett, sen., allotted in the partition to the heirs of Margaret Wilson.

From house on Prince and Fayette streets, 8 5-12 years, at $60		$505 00
Duke and Henry streets, 8 5-12 years, at $60		505 00
House, Columbus, Cameron, and Alfred streets, 6 tenements, at $30 each, is $180, 8 5-12 years		975 00
House, Washington street, next to Mrs. Fowles, 8 5-12 years, at $50		420 83
		$2,405 83
The half of $2,405 83, is		$1,202 91
Simple interest on $1,202 91, is	$329 00	1,531 91
Compound interest on $1,202 91, is	375 32	1.578 23
The said heirs of Margaret Wilson are entitled to credits against the above, as follows, viz:		
For taxes of 1835	$13 94	
1836	13 94	
1837	9 86	
1838	8 50	
1839	10 62½	
1840	11 90	
1841	11 90	
1842	12 60	
		93 26½
For ground rents on property on Prince and Fayette, and Duke and Henry streets, from 1st January, 1834, to 1st January, 1842, 8 years, at $40 a year		320 00
For ground rents on property on Cameron, Columbus, and Alfred streets, from 1st January, 1834, to 1st January, 1842, 8 years, at $83 33 a year		666 67
		$1,079 93
The half of $1,079 93, is		$539 96½
Simple interest on $539 96½, is	$133 87½	$673 94
Comp. $539 96 1-2, is	153 54½	693 51
Balance without interest		662 94½
At simple interest		858 07
At compound interest		884 72

Depositions taken by master commissioner.

WILLIAM BROCKETT & als.
vs.
ROBERT BROCKETT & als.

Depositions of witnesses taken before R. Johnston, master commissioner, under authority of an order of the circuit court of the District of Columbia for Alexandria county, in chancery, at the of-

fice of the said commissioner in Alexandria, commencing at 10 o'clock A. M., on the 27th day of July, and continuing from day to day; of the taking of which, and of all other proceedings under said order, the parties defendant had due notice.

1. In relation to the House and lot on "Brockett's alley:"

John M. Clapdore being first duly sworn, deposes and says: he was tenant of this property from the time Mrs. Elizabeth Brockett left it until the fall of 1836, say 6 years; during all which time he paid $60 a year rent, to Robt. Brockett, jr., the deft.; James Greenwood moved in after he left; property was left in good order by old Mr. Brockett when he died; often asked R. Brockett, jr., to repair the house, which he refused to do, except to put a new cellar door on, and two stone steps to the front door; for want of repairs, a good deal of the weather boarding has fallen off, and the skylight has admitted the rains.

Mrs. Patten, being first duly sworn, deposes and says: She has occupied this property four years last June, and still does; pays $24 a year rent for half of the house to R. Brockett, jr.; the tenant of the residue of the house pays the same rent to him; house is in a miserable condition—no repairs having been put on it since she has been in it; several window sashes are out, and many panes of glass broken out of the windows.

2. House and lot, corner of Prince and Alfred streets.

George Brent, being first duly sworn, deposes and says: Has occupied this property, from 13th Dec., 1829, till 13th Dec'r, 1832, 3 years—during which time paid $180 a year rent, and always to R. Brockett, jr.; when he went into the house [it] required some repairs, which were done—such as papering and painting; leaked sometimes when witness first went in; left because the property was not kept in proper repair; Charles T. Chapman, now deceased, followed witness as tenant, and witness believes paid the same rent.

John H. Brent, being first duly sworn, deposes and says: Is tenant of this property, and has been from the 15th Feb'y, 1835; has always paid $175 a year for it; paid about 3 years rent to Miss Byrne, guardian of Walter Ann Brockett, now Mrs. Ball, and afterwards paid to Wm. Ball, her husband, with whom he has settled up to April, 1842; found the house a good deal out of repair when he went in, in almost every respect; Miss Byrne did $60 worth of papering, painting, and trifling repairs to window pulleys and gutters; the shingles of the roof are, and always have been, rotten since he went in; roof leaked badly; the whole suffering for want of repairs; the kitchen was slightly repaired, but that and the stable are still much out of order; the brick enclosure on the west side of the lot is in a falling state; does not think the property has suffered any by deterioration since Mr. Ball has had it in charge, at least so far as he can perceive.

3. House and lot, corner of Prince and Fayette streets.

Mrs. Piles being first duly sworn, deposes and says: She has

lived in this house about 3 months last past; rented it from Wilson's heirs at $6 a month, and has not yet paid any rent; the house is in a wretched condition; leaks very badly; the fire places are out of order; house requires general repairs to be made habitable; a considerable part of the weather-boarding is off, and the floors are very open; has left the house in consequence of its bad condition.

Alexander Veitch, being first duly sworn, deposes and says: He is a house carpenter by trade, and is a judge of the nature and cost of building and repairing houses; owns and occupies the house next to this; this house was in good order when R. Brockett, sen., died, and is now much out of order; has suffered for the want of *timely* repairs much more than the cost of such repairs; the tenant before Mrs. Piles was Mr. Tippett, who agreed to pay $5 a month; a part of the time Tippett was in there was another tenant at $2 50 a month; this house has been generally tenanted since old Mr. Brockett's death.

Tarlton T. Henderson, being first duly sworn, deposes and says: He lived in this house during the years 1830, 1831, and 1832; paid $6 a month rent to R. Brockett, jr.; property not in good order, and but trifling repairs, if any, done to it while he was in it.

John Devaugn, being first duly sworn, deposes and says: He rented this property 2 years from spring of 1837, in connexion with the property on Duke and Henry streets; no repairs done to it while he was in, except a little patching at his own expence; paid $36 a year rent to E. Burchell, agent for Margaret Wilson's heirs, and rented out this house, without the lot, for $3 50 a month.

(See J. Wilson's deposition; also E. Burchell's and W. C. Reynold's.)

4. House and lot, corner of Duke and Henry streets.

John Devaughn, being first duly sworn, deposes and says: Lived in this house 3 years, beginning with the spring of 1836; paid for it $48 a year to the agent of Margaret Wilson's heirs; house in very bad condition when he went in, but was patched up while he was in, so as to make it merely habitable; Jas. Carroll succeeded him as tenant.

William Johnson, being first duly sworn, deposes and says: Lived in the house on Duke and Henry streets; went in first of May, 1842; pays $6 a month to W. C. Reynolds, agent for Wilson's heirs; house leakes; cellar walls in falling state; window lights broken; fire-places in very bad order.

Henry Brent, being first duly sworn, deposes and says: Lived in this house 2 years—about, say from the fall of 1832 until the Wilson's got possession; paid $4 a month rent to R. Brockett, jr., who put a new fence around the lot while he was in—the former one having fallen down—and did a good deal of repairs to the house.

(See W. C. Reynold's deposition.)

5. Houses and lot on Columbus, Cameron, and Alfred streets.

Mrs. Ogden, being first duly sworn, deposes and says: She lived

in the south house of the row on Alfred street; moved into it from the house on Washington street, (say fall of 1835;) paid $2 50 a month rent to the agent for Wilson's heirs, E. Burchell; house very much out of order; no repairs made while she was in it.

Samuel Lunt, being first duly sworn, deposes and says: He is administrator of his father Ezra Lunt, who was agent for this property from the latter part of 1836, until some time in 1839; he believes from the accounts upon his father's books of collections of rents, and payments for ground rents, taxes, and repairs, it appears that the property did not pay its expenses; he has heard his father say that he lost money by it.

Edward Burchell, being first duly sworn, deposes and says: He was agent for the Wilsons for this property, and for that on Prince and Fayette, and Duke and Henry streets, from 15th Dec'r, 1834, until some time in April, 1837, during which time he received from the whole property $318 in rents—all of which paid out and absorbed in taxes, repairs, ground rents, and commissions, (shows Thos. K. Wilson's written settlement accordingly;) all this property was in a wretched condition, and could hardly be kept habitable.

William C. Reynolds, being first duly sworn, deposes and says: He was agent for the Wilsons, for all their property in this suit, from spring of 1840, till the end of 1841, except the property on Columbus, Cameron, and Alfred streets, which was taken possession of by Mr. Lloyd, the holder of the ground rent, about a month after his agency begun, for arrears; the three houses on Alfred street then produced $2 each per month, and the tenements at the corner of Columbus and Cameron, together, $4 50 a month; the property on Prince and Fayette streets (No. 3) rented for $4 50 a month until repaired, which was pretty generally done, when it rented for $6 a month; the property on Duke and Henry streets (No. 4) rented at $5 a month when his agency begun, and since then for $6; put the house last mentioned in pretty good order while he was agent; his total collections for all the property were $196, including $42 received from the representatives of John Johnson, a former agent; and he has paid for repairs and ground rents $190 79; the representatives of John Johnson acknowledged to witness a balance due from Johnson, on account of his agency, of $62 75, after paying the $42, and claim a credit for repairs of about $16.

Robert Kelly, being first duly sworn, deposes and says: He lived in one (the best) of the houses on Alfred street, about 4 years, beginning in 1833; paid $4 a month rent to R. Brockett, jr., until it came into the hands of the Wilsons, and then paid them $3 50; house was in pretty good order while he was in, and was repaired by Mr. Wilson when he came into possession.

John Welsh, being first duly sworn, deposes and says: He lived in one of the houses, on Alfred street, in 1833, for 3 months, and paid $3 a month rent to R. Brockett, jr.; house in tolerable order

while he was in it; has heard the tenants of the two other houses say they paid $3 a month; no repairs done while he was in; moved into the house on Prince and Fayette streets, in March, 1833, and occupied it upwards of 2 years, and paid $5 a month rent to R. Brockett, jr., until May, 1834; after which he paid $4 50 a month to the Wilsons; property in indifferent order; no repairs done while he was there, except some small repairs to window lights when he first went in.

6. House, corner of Washington and Queen streets, south house in row of 4 houses.

Elijah Horseman, being first duly sworn, deposes and says: He lived in this house from fall of 1832, between 3 and 4 years, paid $86 a year rent (the same rent O. Leddy paid before him) to R. Brockett, jr.; property has never been without a tenant; O. Leddy preceded witness; John T. Thompson followed him; then Mrs. Labeal, and then Mr. Kidwell, the present tenant; no repairs done while he was in, until after the division between the heirs, when R Brockett, jr., put up a shed in front.

John T. Thompson, being first duly sworn, deposes and says: He moved in this house the day Horseman left it; lived in it 2 years, and perhaps longer; paid $96 a year rent to R. Brockett, jr.; no repairs put upon the house while he was in, though, as well as he recollects, it was in pretty good order.

Mary Labeal, being first duly sworn, deposes and says: She moved into this house the day Thompson left, and was followed immediately by J. Kidwell; no repairs done while she was in, but there was no great need of them, except that the east fence was down a good part of the time, and remained so when she left; paid $8 a month rent to R. Brockett, jr.

John Kidwell, being first duly sworn, deposes and says: He occupied this house from the time Mrs. Labeal left—say September, 1839; still lives there; pays $96 a year rent to R. Brockett, jr.; property is now much out of order.

7. House next to the corner of Washington and Queen streets.

Mrs. Dorcas Dudley, being first duly sworn, deposes and says: She occupied this house from the 12th of February, 1831, until the 1st of Nov., 1833; during which time she paid $4 a month rent to R. Brockett, jr.; the house was in tolerable order.

Mrs. Ogden, widow of Resin Ogden, being first duly sworn, deposes and says: Lived in this house after Mrs. Dudley left, and continued in it about 2 years; paid $4 a month rent to R. Brockett, jr.; house put in good order by him.

Edward Clarkson, being first duly sworn, deposes and says: Went to live in this house in spring of 1835, and left it in spring of 1836; paid $3 50 a month rent to R. Brockett, jr.; lived there fully 9 months; house in tolerable order; not repaired while he was in.

John Elliot being first duly sworn, deposes and says: Lived in this house 8 months, previous to moving into the house next to the house, now Mrs. Fowle's, in the fall of 1838; paid $4 a month rent to R. Brockett, jr.; house in bad order while he was there, which was one reason for his leaving it.

John Hill, being first duly sworn, deposes and says: He moved into this house on the 14th of January, 1840, and still lives there; pays $60 a year rent to Rob't. Brockett, jr.; house was in general bad order when he went in, and still is; leaks; asked Robert Brockett, jr., to make necessary repairs, which he refused; the back of the kitchen and smoke house, which are of brick, falling down for want of attention; this house was occupied successively, by Jno. Tippett, Thos. Drowns, and John Kell, before witness went in.

8. Second house from corner of Washington and Queen streets, being 3d in the row, counting from corner northwardly.

Mrs. Mary Labeal, being first duly sworn, says: She lived in this house from 27th February, 1829, about ten years; paid $4 50 a month rent, until the front shed was put up and some repairs made; after which paid $5; always paid the rent to Robert Brockett, jr.; for a house of the sort, its condition was pretty good while she was in it.

Miss Nancy Brewer, being first duly sworn, says: She lived in this house with her step-father, Wm. Thomas, who moved in directly after Mrs. Labeal left, and continued in it until March, 1841; knows that William Thomas paid $5 a month rent; R. Brockett, jr., collected the rents; carried the money to him sometimes herself, to pay the rent; W. Thomas now lives in Prince William county, Virginia.

Bazil Warring, being first duly sworn, says: He moved into this house on 1st of April, 1841, and continues to live in it; pays $60 a year rent to R. Brockett, jr.; property in very bad order when he went in, and is worse now; R. Brockett, jr., promised to make the necessary repairs when he went in, but has not done so.

9. North or 4th house in the row on Washington and Queen streets.

Mrs. Susan Bell, being first duly sworn, says: She moved into this house in May, 1829, and continued in it until, she believes, October, 1830; paid $4 a month to Robert Brockett, jr.; house in tolerably good order; no repairs done while she was in.

Julia Henderson, being first duly sworn, says: She moved into this house not many days after Mrs. Bell left it; lived in it 4 years, and perhaps longer; her husband, who is now at Fairfax court house, paid $4 a month rent for it, all the time, to R. Brockett, jr.: moved out in the summer of 1835, and returned in January, 1837, and still lives there, paying $4 a month to R. Brockett, jr.; the roof of this house leaks badly, which R. Brockett, jr., has tried to remedy without success; the roof leaking now worse than at any time since she has been in the house; does not believe that the leak-

ing could be stopped, and that a new roof is necessary; he has made other repairs to the house.

Elijah Horseman, being first duly sworn, says: He moved into this house in the summer of 1835, upon Henderson's leaving it, and occupied it a few months, paying $4 a month rent to R. Brockett, jr.; house in pretty bad order; no repairs done to it while he was in it.

Miss Nancy Brewer, being first duly sworn, says: This house was occupied by her step-father, Wm. Thomas, (in whose family she lived) from either February or March, 1836, after Mr. Dawson left, who lived there, she believes, about a month, until Dec'r, 1836, or January, 1839; Mr. Henderson moved in, soon after W. Thomas left.

10. House on Washington street, adjoining the house, now Mrs. Paulina Fowle's.

Benjamin Thomas, being first duly sworn, says: He lived in this house with his mother, at the time of the death of R. Brockett, sen'r; paid $5 a month rent, and after the death of R. Brockett, sen'r, paid it to his son Robert; Mr. Dudley moved into the house immediately after his mother left; house not in good order at the death of R. Brockett, sen'r, tho' tenantable.

Mrs. Joseph Dudley, being first duly sworn, says: Moved into this house in November, 1833, and left the last of October, 1834; the rent was $5 a month, all the time; shows R. Brockett's, jr's., receipts for 9 months rent, and Isaac Wilson's for 3 months; the house was in bad condition during nearly all the time she was in; shortly before she left, Mr. Wilson repaired the house slightly.

Thomas Slatford, being first duly sworn, says: He lived in this house for about 4 months before John Elliot went in it; paid $4 a month rent to Mr. Wilson, the son of Margaret Wilson; house much out of order when he went in; paid about $15 out of his own pocket to make it comfortable, in the fall of 1838; some of the flooring had rotted, from exposure to leakage from the roof.

John Elliot, being first duly sworn, says: He went into this house in the fall of 1838, and still continues in it; paid, at first, $4 a month rent then $4½, and now $5 a month; has always paid the rent to Mr. Wilson, or to an agent of the Wilsons, since his death.

11. Lot on Fayette alley.

George H. Smoot, being first duly sworn, deposes and says: He has occupied this lot from 1st July, 1833, to the present time; pays $10 a year rent; paid $11 67 rent to R. Brockett, jr., since when he has paid the rent to Miss Burns, guardian of Walter Ann Brockett, now the wife of Wm. Ball, and then to Mr. Ball.

Depositions in relation to the deterioration of the property of R. Brockett's estate, for the want of timely repairs.

Philip B. Vernon, being first duly sworn, says: He is a house carpenter by trade, has been acquainted with the property on

Prince and Fayette streets, from many years previous to the death of R. Brockett, sen'r, until now; lived near it a good many years; has carefully examined all the property within a few days past; is of the opinion that this house has deteriorated $75 in value, for the want of timely and necessary repairs to the wood work, after making proper allowance for ordinary wear and tear.

Property on Duke and Henry streets.—Thinks this house is in as good order as at the time of old R. Brockett's death.

Property on Prince and Alfred streets.—This house and its appurtenances were in good repair at the death of R. Brockett, sen'r. It would now take $125 to roof it, including materials, and $225 to restore the fencing, which is now entirely down; and other repairs to the wood-work would cost about $80. It is his opinion that fully one-half of these sums could have been saved by seasonable repairs, say $215.

Property on Washington and Queen streets.—Thinks this property has suffered for want of seasonable repairs $150 in value. It would now take $600 to put these houses in good order for carpenter's work alone, including materials.

House on Washington street, next to Mrs. Fowle's.—This property is in good condition.

Property on Columbus, Cameron and Alfred streets. It would take at least $650 to put the houses on Alfred street in good order. The back buildings have fallen down. The 4 houses on Alfred street formerly rented for $50 a year each, and now only rent for $24 each. These houses have suffered in value from neglect of repairs $250 over and above the cost of proper and timely repairs, wear and tear. The other houses, corner of Columbus and Cameron streets, have not deteriorated from neglect.

House in Brockett's alley.—This house is in very bad condition, and has suffered much for the want of seasonable repairs. To repair it properly, the carpenter's work and materials would cost $300. Is of opinion that the deterioration over and above a proper allowance for necessary repairs is $200.

Alexander Veitch, being first duly sworn, says, he has known all this property for many years, from long before old Mr. Brockett's death to the present time. Is a house carpenter by trade, and is well acquainted with masonry and brick work. Knows the condition in which Mr. Brockett, sen'r, left the property, and has inspected it all within a few days past.

Property on Prince and Fayette streets: Thinks this property has suffered from waste and neglect, after allowing for cost of timely repairs, and wear and tear, $100 in value. Property on Duke and Henry streets, is in as *could* repair as could be expected.

Property on Prince and Alfred streets: Thinks this property has suffered from waste and neglect after allowing for cost of seasonable repairs, and wear and tear, $250 in all.

Property on Washington and Queen streets: Agrees with Mr. Vernon, that the wood work has suffered $150, for the want of seasonable repairs, over and above what such repairs and wear and tear would have cost; and is of the opinion that the brick work, including pavements in the yards, has suffered in the same way $80 in addition.

House on Washington street, next to Mrs. Fowle's, is in very fair order.

Property on Columbus, Cameron and Alfred streets: The four houses on Alfred street were left in good condition by old Mr. Brockett, as was all the rest of his property; is of the opinion that it would require an expense of $800 to restore them to the state in which he left them; and that the property has lost in value, from waste and neglect, over and above the cost of seasonable repairs, wear and tear, for brick work and all, $350.

Property on Brockett's alley.—Is of the opinion that this property has suffered in value from deterioration, over and above the cost of proper repairs, wear and tear, fully $200.

Brick yard lot, north of Mrs. Hodgson's late dwelling.—This property has been used and occupied by R. Brockett, jr., ever since his father's death. The brick walls in which the bricks are burnt were put there by Mr. Brocket, sen'r. This property is worth at least $60 a year for the use of the ground, and the clay for making bricks, without the clamps.

Witness knew the property conveyed by Robert Brockett, sen'r, in his life time to R. Brockett, jr., at the time it was so conveyed, and ever since. There was an old wooden dwelling upon it, at the time it was so conveyed, in which R. Brockett, sen'r, resided. Is of the opinion that the annual value of the ground alone, since the death of Mr. Brocket, sen'r, is at least $40. The old house was removed by R. Brockett, jr., from the lot before his father's death.

BROCKETT vs. BROCKETT.

Statement of George Davies.

The lot at the corner of Alfred and Prince street was nearly *bear* of fencing seven or eight years ago; there were a few parcels of fence remaining. Mr. Armfield rented the stable at that time; it was in very bad repair and witness had to repair it, part of the brick wall of the stable having fallen down; witness thinks this was seven or eight years ago.

Sworn to before me, 1st Nov'r, 1842.

R. JOHNSTON.

Robert Brockett, jr., paid all the taxes and ground rents due on his late father's estate until January, 1834. After the division of the real estate in 1834, Margaret Burns became guardian of Wal-

ter Ann Brockett, and paid, or cause to be paid, the taxes and ground rent due on the house and lot on Prince street; the taxes were paid by Mr. Brockett for 1833, and ground rent on the above house to 15th Sept'r, 1833, and no longer.

A. MOORE.

Being called on, as one of the commissioners who divided the estate of the late Robert Brockett, to state the comparitive repair of the property at the corner of Prince and Alfred streets, at the time of the division and at the present time, I certify, that at the time of the division, the corner lot was partially enclosed, whole pannels of which were decayed and fallen, and the house in bad repair; at present the old enclosure is down, but the repairs made on the house, which has been well tenanted, makes the premises, in my opinion, equal in repair to the time of the division.

JOHN ADAMS.

1*st Nov.*, 1842.

ALEXANDRIA COUNTY, *sct:*

This day personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, John Adam, and made oath in due form of law, that the statements set forth in the foregoing certificate are just and true, to the best of his knowledge and belief.

Given under my hand this 2d day of November, 1842.

EDGAR SNOWDEN, *J. P.*

I do hereby certify that, in September, 1834, I became guardian for Walter Ann Brockett, and at that time, to the best of my knowledge, there was due from the tenant of the house on Prince street, fifty dollars to the said Walter Ann Brockett; and a short time afterwards there was a claim made on me for one year's taxes, amounting to upwards of forty dollars; and about the same time one year's ground rent, amounting to sixty-six dollars sixty-six cents, making the property in debt; and the property, while in my charge, unoccupied for about two months, and before the property could be again rented, upwards of sixty had to be laid out in repairs before the house could be occupied.

MARGARET BYRNE.

Sworn to before me, this first day of November, 1842.

CHARLES McKNIGHT,
Justice peace.

According to the best of my recollection, at the time the commissioners divided the property of Robert Brockett, deceased, (of whom I was one *of them*,) we found the estate much in the same condition it is in at this time. The house on Prince street was, as well as I remember, very little out of repair; there was a brick stable which had no fence around it at that time, and the doors and windows were out of order. There had been a fence round the lot on

the east side of the lot, but at the time we examined the premises there were only a few of the posts standing. In conclusion, the premises look as well now as they did when we divided the estate.

Given under my hand, this first day of November, 1842.

GEO. DRINKER.

ALEXANDRIA, 1*st Sept.*, 1834.

Estate of Robert Brockett,

To R. Brockett, jr. Dr.

No. 1	To 705 feet rough fence, *a* 112½	- -	$8 60
2	" 20 cedar posts, *a* 25	- - -	5 00
3	" 63 yds. brick pavement & materials, *a* 50c.		31 50
4	" 87 do. do. part old, *a* 25c.	-	21 75
5	" 4 cellar doors and frames, *a* $2 50	-	10 00
6	" 8 window curbes, *a* $1	- - -	8 00
7	" 2 front door steps, stone, *a* $2	- -	4 00
8	" 2 back do. do. do. *a* $1	- -	2 00
9	" repairing back pavement, *a* $4	- -	4 00
10	" plastering and materials, *a* $10 00	-	10 00
11	" 1,100 feet common plank, *a* $1 50	-	16 50
12	" Jas. Sears' bill of work	- - -	36 36½
13	" D. Price's bill of work	- - -	56 44
14	" S. Bartle's bill of work	- - -	50 82
15	" G. H. Smoot's bill of lumber	- -	130 54
16	" R. S. Bowie's bill of painting	- -	35 00
17	" half commission on work measured by Veitch, $4	- - - -	4 00
			434 51½
18	" painting brick back buildings	- -	20 00
			$454 51½

This day James Henderson came before me, and made oath in due form, that he lived in one of the houses on Washington street, formerly of R. Brockett's estate, now held by R. Brockett, jr., when the repairs charged above, and numbered from one to eleven, and Nos. 18, were done; that he assisted in doing them, and that the above charges are, he believes, just and fair, both as to the rates and amounts.

R. JOHNSTON, *M. C.*

1st November, 1842.

Captain Robert Brockett, Dr. to James Sears.

To 577 feet rafters, lathing, and shingling, *a* 3 00 -	$17 31
" 82½ feet fana, *a* $6 - - - -	4 95
" 82½ feet planed and beeded edges, large stuff, plates, *a* 10 - - - - -	8 25
	86
" 14⅓ feet virge board, *a* 6 - - - -	
" 82 feet old cornice removed, cut out, and cut in pieces, *a* 6 - - - - -	4 92
" 550 feet planeing joint and beeding sheathing, *a* 3	16 50
" 217 feet run rafters, planed and beeded, *a* 6 -	12 02
" 99 ft. sqr. posts, planed & corners champhered off, *a* 8	7 92
	$72 73
Deduct 50 per cent. - -	36 36½
Nett bill - - - -	$36 36½

My commission for measurement, $2 16, one half to each party, Sept. 3, 1834. THOS. K. BEALE.

The within named James W. Sears, this day made oath in due form before me, that the work charged for in the within bill was done by him upon the houses on Washington and Queen streets, formerly belonging to the estate of Robert Brockett, sen'r, dec'd, now held by R. Brockett, jr., and was necessary, and of permanent benefit to the houses; that the same was paid for by the said R. Brockett, jr., and that he procured from George H. Smoot, and used about said work, lumber amounting to $41 98, in June, 1834.

1 Nov., 1842. R. JOHNSTON, *M. C.*

Mr. Robert Brockett, for houses on Washington street, to D. Price.

To 4 double cellar doors, pine cheaks, *a* 6 - -	$24 00
" 1 cellar door frame, pine, *a* 2 00 - - -	2 00
" 10 pair hooks and hinges, *a* 30 - - -	3 00
" 5 hasps and staples, *a* 12½ - - -	62½
" 5 feet cellar door chains, *a* 16 - - -	80
" 83-6 ft. front sill to houses, *a* 16 - - -	13 36
" 250 6 narrow weather boarding and piecing framing, *a* 6 - - - - -	15 03
" 31 door sill, *a* 12½ - - - -	3 87½
" 96 rune of narrow planed and beeded rola, *a* 5 -	4 80
" 72 rough flooring and joists, *a* 3 - - -	2 16
" 2 wide door steps, *a* 1 00 - - - -	2 00
" 16 lights *ould* sash, 8 by 10, *a* 12½ - -	2 00
" 4 door frames, pieced, *a* 15 - -	60
" 20 cellar door ledy, plain, *a* 5 - - -	1 00
	75 25
Deduct 25 per cent., is - -	18 81
Nett amount - - - -	$56 44

Charge commission $2 50, half to be paid by each party; measured and valued by

WM. VEITCH.

The within named David Price this day came before me, and made oath in due form, that the work charged in the within bill was done by him on the houses upon Queen and Washington streets and Brockett's alley, belonging to the estate of Robert Brockett, deceased; that the same has been paid him by Robert Brockett, jr., some time in the summer of 1834; that the work so charged was necessary, and of permanent benefit to the houses; and that affiant procured for R. Brockett, jr., the lumber charged in the account of George H. Smoot, under dates from May 28th, 1834, to June 7th, 1834, and on 10th June, 1834, for the said work, the same amounting to $25 01, and used the same therein.

R. JOHNSTON, *M. C.*

1st November, 1842.

Mr. Robert Brockett, for houses on Washington street,

To Samuel Bartle.

To 7½ days' work, *a* 7*s.* 6*d.* - - - -	$9 06
" 2 step ladders and stuff, *a* 3 00 - - -	6 00
" 25 lights, sash 8 by 10, *a* 12½ - - -	3 50
" 260 feet narrow rough weather-boarding and sheds, pieced, *a* 3 - - - -	7 80
" 78 do. common door and window sill and frame, *a* 10 - - - - -	7 80
" 33 do. ledg shutters, *a* 10 - - -	3 30
" 210 do. shingling and rafters, *a* 4 - -	8 40
" 17 do. beaded plant, *a* 10 - - -	1 70
" 20 do. casing, *a* 6 - - - -	1 20
" 360 do. rough weather boarding, sprung and beaded, *a* 2 - - - -	7 20
" 12 do. ledg door, *a* 9 - - - -	1 08
" 6 do. corner strip, *a* 6 - - -	36
" 4 pair hinges, *a* 25 - - - -	1 00
" 4 fastenings to shutters and doors, *a* 15 - -	60
" repairing old fence and gates - - -	5 00
" 250 feet rough fence, *a* 12½ - - -	3 75
	$67 75
Deduct 25 per cent., is - -	16 93
Nett amount - - -	$50 82

Charge commission $2 50, half to be paid by each party; measured and valued by

WM. VEITCH.

The within named Saml. Bartle this day came before me, and made oath, in due form, that the work charged for in the within bill was done by him upon the houses on Washington and Queen streets, formerly belonging to the estate of R. Brockett, sen'r, dec'd, now held by R. Brockett, jr.; that the same was paid for by said R. Brockett, jr., and was necessary, and of permanent benefit to the houses; that he believes he procured from George H. Smoot, and used about said work, lumber amounting to $60 01, as charged in said Smoot's account shown him by me; all of which was got in June, 1834, excepting $7 34½, which was got in May, 1839.

R. JOHNSTON, *M. C.*

1 Nov'r, 1842.

ALEXANDRIA, *Sept'r* 21, 1833.

Capt. Robt. Brockett,

To Reuben S. Bowie, Dr.

June 18, 1834.—To painting outside of house on Washington street, per agreement - - - - $35 00

Contra, Cr.

By amount settled with Henry Brent - - - $5 00

Received payment in full to the 25th Octo., 1834.

R. S. BOWIE.

Henry Brent this day made oath, in due form, before me, that he worked for Reuben S. Bowie, and helped to do the painting for which $35 is charged in the within bill by him—the charge is moderate, and has heard him say he lost money by the job; the painting was done on the houses on Queen and Washington streets formerly belonging to R. Brockett, sen'r, and now held by R. Brockett, jr., that the whole of the within bill and receipt are in the handwriting of Reuben S. Bowie, whom he has seen write often.

R. JOHNSTON, *M. C.*

1st Nov'r, 1842.

Mr. Robert Brockett for estate of the late R. Brockett,

To Geo. H. Smoot, Dr.

1834.						
May 28	Sworn to in D. Price's affidavit.	To 160 ft. square hart stuff, *a*	$3	Got by D. Price.	$4	80
		" 38 do Md. 5-in. N. C.,	3½		1	33
		" 49 do 5-in. cul.	5*s.*		1	22
		" 49 do 1-in Lees, 13*s.*	6*d.*		1	10
31		" 55 do scantling,	1¼			69
June 3		" 60 feet N. C. square stuff,	2½		1	50
		" 25 do N. C. do,	2½			62½
4		" 151 do 1-in. best cul.	2¼		3	40
		" 212 do 1-in. cul.	10*s.* 6*d.*		3	71
5		" 35 feet N. C. square stuff,	15*s.*			87½
6		" 60 do do	15*s.*		1	50
7		" 59 do best cul.	13*s.* 6*d.*		1	33

STATEMENT—Continued.

1834.						
June 9	To 423 ft. 1-in. cul.	10*s.* 6*d.*		Got by S. Bartle.	$7 40	
"	" 59 do 5-in. N. C. cul.	15*s.*			1 47½	
"	" 34 do N. C. joist	$3			1 02	
"	" 86 do N. C. scantling,	2½			2 15	
"	" 153 do 1-in. Lee's cul.	10*s.* 6*d.*			2 68	
"	" 165 do Md. 5-in. N. C.	$3		Got by J. W. Sears.	4 95	
"	" 140 do joist N. C.	$3			4 20	
"	" 265 do N. C. scantling,	$2½			6 62½	
"	" 48 do square N. C.	15*s.*			1 20	
"	" 397 feet 1-in. best cul., 13*s.* 6*d.* Sears				8 93	
10	" 68 do N. C. square stuff 15*s.* Bartle				1 70	
"	" 325 best large shingles $9. Price		-		2 92½	
11	" 1 cask T. T. lime, pr. Richard		-		1 75	
"	" 86 feet 1-in. best cul.	15*s.* 6*d.*		Sears.	1 93	
"	" cash paid for sawing 26 ft. stuff, 2½				65	
11	" 1 cask lime,				1 75	
"	" 463 feet 1-in. Lee's boards, 10*s.* 6*d.*				8 10	
"	" 25 do N. C. square stuff, 15c.				62½	
13	" 12 lb. 10d. nails,	7c.			84	
"	" 3 lb. 12d. do	7c.			21	
"	" 5 lb. 20d. do	7c.		Pr. Bartle.	35	
"	" 4 lb. cut spikes,	7c.			28	
14	" 20 lbs. 5d. nails,	8			1 60	
"	" 498 feet 1-in. Lee's cul.	10*s.* 6*d.*			8 71½	
"	" cartage,				12½	
"	" 135 feet Md. Lee's,	$3			4 05	
"	" 61 do best cul. Lee's,	2¼			1 37½	
"	" 948 large shingles, $9, for Sears,				8 53	
16	" 58 feet E. S. scantling,	1⅓		Bartle.	72½	
"	" 80 do N. C. do	2½			2 00	
"	" 1,611 shingles,	4½			7 25	
"	" 1,500 large shingles, $9, Sears		-		13 50	
17	" 60 feet N. C. square stuff,	2½			1 50	
1839.						
May 11	72 feet 5-in. N. C. plank,	$3	2 16		$123 19½	
"	5 cedar posts,	25	1 25			
20	44 feet 5-in. N. C.	$3	1 32			
"	18 lb. nails,		1 50			
22	322 feet 1-in. Lee's cul., 10*s.* 6*d.*		5 63½			
"	125 do 1-in. do 10*s.* 6*d.*		2 18½			
"	2 cedar posts,	25c.	50			
"	cartage,		12½			
One half to R. Jamieson,			$14 67½			
One half to the acct.,	- - - -				7 34½	
Rec'd paymt. in acct. with Robert Brockett, jr.					$130 54	

GEO. H. SMOOT.

Petition of R. Brockett to open the account referred to Master Commissioner Johnston.

And at a court continued and held for the district and county aforesaid, the 26th day of May, 1843, came the parties aforesaid, by their solicitors, and it is ordered by the court, this 26 day of May, 1843, that the petition of Robert Brockett, filed in this cause, and sworn to by him on the 23d of May, 1843, with the papers therein alluded to, be referred to the master commissioner Johnston, to enquire into the *truth* of the facts therein stated, and to take and report to this court the evidence which may be produced to him in support of the alledged exceptions suggested in the said petition, and of the credit in the said petition claimed, so that the court may be the better enabled to decide upon the propriety of exercising their discretionary power of opening the decree for the purpose of admitting the claims stated in the said petition, and to report to this court on the first Monday in June next; and that he give such notice to the parties, or their counsel respectively, of the time and place, when and where he will proceed to execute this order, as shall allow five days therefor; which petition is as follows:

Petition.

WM. BROCKETT & als.
vs.
ROBERT BROCKETT & als.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Alexandria.

The petition of Robert Brockett, one of the defendants in the above named cause, sheweth to the court, that master commissioner Johnston, appointed by the court to make report of the rents and profits of the estate of Robert Brockett, deceased, received by the defendants, did not make his said report until the commencement of the last term of this court; and that your petitioner has until the expiration of the present term to except to the same.

Your petitioner, not knowing that the said commissioner had closed his report, presented to him certain credits, exhibited herewith, to be allowed in the said report; but the said commissioner declined receiving the same, although he admitted their correctness.

At the last term of this court, one of the counsel of your petitioner, viz: Edmund I. Lee, claimed the right, which was admitted under the rule of the court, to be allowed to the present term of the court, to file exceptions to the said report; but your petitioner shews, that his said counsel was prevented from so doing by sickness, continuing from December last until this time.

Among other objections to the said commissioner's report, your petitioner shews, that he is charged therein with the annual value of his father's real estate, from the time of his death to the time of the division of said estate amongst his heirs, for which, as to the

rents and profits actually received, your petitioner had fully accounted before the orphan's court of this county, as will appear by reference to the records of said court.

Your petitioner claims credits and reductions for numerous errors and overcharges in said report, as per account marked A; and for the full amount of the rents by him heretofore accounted for with the orphan's court as aforesaid, with the interest thereon, as per the account herewith filed, marked B: one-half of which is properly chargeable to the complainants.

Your petitioner also claims credit for one-half of the annual value of the house occupied by complainants' mother, Elizabeth Brockett, for several years after the death of Robert Brockett, senr. He has been informed, that at the present term of this court, a decree was obtained by the plaintiffs in the absence of your petitioner's said counsel, viz: Edmund I. Lee, affirming the report of said master commissioner Johnston; he therefore prays the court that the said decree may be set aside, and the report recommitted to the said commissioner for correction, with directions to report his proceedings therein to the next term of the court.

ROBT. BROCKETT.

COUNTY OF ALEXANDRIA, *to wit:*

Personally appeared before me, the subscriber, a justice of the peace for said county, Robert Brockett, and made oath in due form of law, that the matters and things stated in the foregoing petition are true, to the best of his knowledge and belief.

Given under my hand, this 23d day of May, 1843.

R. JOHNSTON, *J. P.*

I hereby state, that at the calling of the case of Brockett & als. *vs.* Brockett & als., at the last October term of the circuit court of Alexandria county, I claimed the right allowed by rule of court, to have until the present term of the court to file exceptions to the commissioner's report in said cause; that this right was admitted by the court, and that exceptions thereto would have been filed but for my indisposition. The exceptions now offered I consider substantial.

EDM. I. LEE.

ALEXANDRIA, *May 18th*, 1843.

To WM. L. BRENT, esq.,
(*Att'y for Wm. Brockett & als.,*) *Washington.*

SIR: Take notice, that I shall make application to the circuit court of Alexandria county, at their meeting on the 26th of this month, to set aside the decree entered in the case of Wm. Brockett & als. *vs.* Robert Brockett & als. at this term.

(Signed) ROBT. BROCKETT.

ALEX'A, 18*th May*, 1843.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

This day Thomas Whittington personally appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath in due form of law, that he served a true copy of the preceeding and annexed notice on William L. Brent, esqr., on the 22d day of May, 1843, by leaving the same with him, said Brent.

Given under my hand, this 22d day of May, 1843.

R. JOHNSTON, *J. P.*

Decree final.

And now, at this day, to wit, at a court continued and held for the district and county aforesaid, the 9th day of June, 1843, came the parties aforesaid, by their solicitors; master commissioner Johnston filed his 2d report, and on hearing the motion of the defendants to open the decree, and refer the commissioner's report back to the master commissioner, with instructions to allow certain credits claimed by the defendants, the motion is overruled by the court.

Appeal.

From which order and decree of the court, as well as the decree made on the 10th of May last, the defendants appeal to the Supreme Court, which is granted; and the defendants are required to give bond and security in the penalty of ten thousand dollars, conditioned to pay to the complainants all costs and damages they may sustain, should the defendants fail to make good their appeal, to be approved by the court, or one of the judges thereof; which 2d report is as follows:

Master Commissioner Johnston's 2d report.

Commissioner's report upon R. Brockett's petition.

WILLIAM BROCKETT & als. } *vs.* } In chancery, Alex'a county.
ROBERT BROCKETT & als. }

To the honorable the circuit court of the District of Columbia for Alexandria county, sitting in chancery.

The undersigned commissioner, to whom was referred the petition of Robert Brockett, filed in the above named cause, (by your order of the 26th ultimo,) with the accompanying papers, with directions to inquire into the truth of the facts therein stated, and to take and report to the court the evidence which should be produced in support of the said Robert Brockett's alleged exceptions, suggested in his said petition, and of the credits in the said petition claimed, and to report to court this day, respectfully reports:

That, as directed in said order, he gave five days' notice to the solicitors of both parties, of the time and place of proceeding, to act upon the matters so referred, and accordingly proceeded to take the evidence called for by the order, on the 3d instant.

The credits claimed by the said Robert Brockett, and shown in statement B., filed with his petition, seem to be sustained by the certified copies of his accounts, settled in the orphan's court of this county, herewith returned, marked No. 1.

He also claims credit for an excessive charge of rent, or annual value, of the lot known as the "brick yard lot," or rather excepts to the charge in toto. The evidence adduced to sustain the exception is contained in the accompanying paper, marked No. 2. Paper No. 3 is the evidence adduced to sustain his claim for a credit for the time the house on Brockett's alley was occupied by complainant's mother, Elizabeth Brockett, namely, from the death of Robert Brockett, senr., in March, 1829, until October, 1832, when the suit referred to in the evidence was decided.

The defendant Robert Brockett requests it to be stated by the commissioner, that he objects and excepts to the charge of rent, made in the former report, for the lot on which he now resides, and which was conveyed to him by Robert Brockett, senr., in his life time.

Commissioner's fee, 5 hours, *a* 75 c., is $3 75.

Respectfully submitted.

R. JOHNSTON, *M. C.*

5th June, 1843.

P. S.—Neither complainants nor their counsel attended, although notified.

B.

A statement of rents collected by Robert Brockett from his father's estate in the town of Alexandria, and which have been accounted for by him in his settlement of his administration account with the orphan's court of Alexandria; with interest calculated thereon from the time of receiving the same to October 1, 1842.

1832, Dec. 2.	Collected rent from James Cloud and George Brent to this date, for house and lot, corner of Prince and Alfred streets - - - -	$690 00
Do	Rent of lot on Fayette alley - -	30 00
1833, Jan. 1.	Rent of church lot, to date - -	456 00
Do	Rent of Prince street lot, to date -	240 00
Do	Rent of Washington street property, do	960 00
1834, June 10.	Rent of brick house on Prince street, from 10th Dec., 1832, to 10th June, 1834, at $200 per annum - -	300 00
Aug. 1.	Rent of Washington street property from various tenants, to date - -	350 00
Do	Rent from various tenants for all the other tenements in town, to date -	501 00
		$3,527 00

Interest on $720 for 9 years 9 months 29 days		$423 68	
Interest on 1,656, for 9 years 9 months -		968 76	
Interest on 300, for 8 years 3 months 21 days		149 55	
Interest on 851, for 8 years 2 months -		416 99	
			$1,958 98
$3,527 principal, interest -		$1,958 98	
			$5,485 98
One-half of this sum is - - - -			$2,742 99

No 1.

Real estate of Robert Brockett, deceased, in account with R. Brockett, jun., administrator.

Dr.

		Vouch's.	
1829.	To cash paid John Pickering, (glazier)	1	$1 87
	Do Benj. Disney, (painter) -	2	34 45
	Do corporation taxes this year	3	93 67
	Do John B. Hamet, (paper-hanger) - -	4	13 50
	Do Jos. H. Davis, for lumber	5	8 00
	Do Zach. Nicholas - -	6	3 37
	Do G. H. Duffey - - -	7	1 25
1830.	Do W. B. Alexander, ground rent - - -	8	83 33
	Do Zach. Nicholas - -	9	3 29
	Do John Pickerin - -	10	70
	Do F. H. Kenedy - -	11	5 00
	Do Benjamin Waters -	12	40 07
	Do corporation taxes this year	13	101 50
	Do Phares Throop - -	14	3 00
	Do G. H. Smoot - -	15	14 17
	Do E. F. Hooe's ground rent	16	40 00
	Do E. Kennedy, for paper -	17	12 50
1831.	Do W. B. Alexander, ground rent - - -	18	83 33
	Do R. J. Bowie - - -	19	5 30
	Do corporation taxes this year	20	95 12
	Do E. F. Hooe, ground rent -	21	40 00
	Do J. H. Davis - -	22	47 46
	Do R. Hodgkin - - -	23	5 41
	Do Taxes omitted - -	24	6 96
1832.	Do W. B. Alexander, ground rent - - -	25	83 33
	Do heirs of E. F. Hooe -	26	40 00
	Do cost of execution on B. Barker, for rent -	27	2 30

DR. STATEMENT—Continued.

		Vouch's.	
1832.	To cash paid B. Waters, (omitted in 1830) - - -	28	$33 11
	Do executors of M. Miller, ground rent from March 1829 to September 1831	29	178 09
	Do corporation taxes this year	30	115 05
1833.	Do Jessy Skidmore, carpenter, for materials and repairs for houses - -	31	110 10
	Do estate of M. Miller, ground rent to Sept. 15, 1832 -	32	66 66
	Do Benj. Greenwood, carpt'r	33	31 01
	Do Jonathan Butcher, for materials for houses -	34	23 39
	Do H. Hayman, for well cover	35	2 00
	Do George Hill, for gutter -	36	75
Mar 13	Do H. Daingerfield, ground rent - - -	37	83 33
	Do Bank of Potomac, on church lot - -	38	40 00
Ap. 3	Do register of wills - -	39	33 33
	10 per cent. commission, $2,386 -	–	238 60
	Balance due estate - - -	–	561 70
			$2,386 00
	To this balance due me on the personal estate account, and ordered by the court to be transferred to this account	–	1,093 69

CREDITS.

1832. De. 10	By rents received from James Cloud and George Brent to this date for house and lot, corner of Prince and Alfred streets - - -	$690 00
1833. Jan. 1	By rent of lot on Fayette alley to April last -	30 00
Jan. 1	By rent of church lot, to date - - -	456 00
	By rent of Prince street lot, to date - -	240 00
	By rent of Washington street property, to date	960 00
	By rent of Alley house - - - -	10 00
		$2,386 00
1833. Apr. 4	By balance due the estate - - -	$561 70
	By balance due the administrator, after de-	

STATEMENT—Continued.

	ducting the above credit of $561 70 due from said administrator to the estate for and on account of the rents and profits collected by him	531 99
	E. E.	$1,093 69

ROBERT BROCKETT, *Administrator.*

Real estate of R. Brockett, deceased, in account with R. Brockett, jun., administrator.

DR.

1833.			
April 3	To balance due the administrator as per account settled this day in the orphan's court -		$531 99
	To cash paid corporation taxes for 1833 -		115 05
	Do	J. H. Davis - - -	73 94
	Do	Robert Jackson - - -	75
	Do	J. S. Miller, ground rent to 15th	
1834.		September, 1833 - -	66 66
Jan. -	Do	P. Vernon, carpenter - -	13 00
	Do	G. H. Smoot - - -	6 09
	Do	Bank of Potomac, ground rent -	40 00
	Do	A. F. Urie's estate - -	24 75
	Do	J. W. Sears, carpenter - -	45 82
	Do	Henry Daingerfield, ground rent	
		to January 1, 1834 - -	83 33
	Do	John Butcher's bill - -	3 91
	Do	R. I. Taylor, attorney-at-law for	
		services in dividing estate -	20 00
Aug.	Do	E. Snowden, for order publication	1 75
	Do	register of wills - - -	8 75
	Do	tax bill - - - -	3 90
	10 per cent. commission on $1,151 - -		115 10
			$1,154 79

CREDITS.

By rent of brick house on Prince street, from 10th December, 1832, to 10th June, 1834, at $200 per annum - - - -	$300 00
By rent of Washington street property from various tenants to August, 1834 - -	350 00
By rent from various tenants for all the other tenements in town to 1st August, 1834 -	501 00
	$1,151 00
By balance due administrator - -	3 79
E. E.	$1,154 79

ROBERT BROCKETT.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

I, Bernard Hooe, register of wills, for the county aforesaid, do hereby certify that the several accounts on this paper contained, are true copies from the original record in my office.

Given under my hand, this 3d day of June, 1843.

B. HOOE, *Register of wills.*

No. 2.

Testimony taken before Reuben Johnston, master commissioner, 3d June, 1843, in the matter of the petition of Robert Brockett, referred to him in the suit of Brockett et als. vs. Brockett et als.

John W. Hollinsbury being first duly sworn, says: That he has always resided in the immediate neighborhood of the lot formerly the property of Robert Brockett, sen., called the "Brick Yard lot," and is well acquainted with its locality and condition, the clamp is not upon the lot, but is built in the public street to the west of it. Has never known R. Brockett, jun., to use or occupy said lot for a brick yard, or for any other purpose. Had he used it, witness must have known of it, as he has lived and worked as a brickmaker within 300 yards of it, with no intervening buildings or any thing else to prevent his seeing it. The lot has never been enclosed or rented out since the death of R. Brockett, senior. Witness owns a lot, containing three-fourths of an acre in Alexandria, which is better situated for carrying on the brick-making business than the lot in question, which lot he has offered to rent to P. Henderson, a brickmaker, for the annual taxes, and no more, which are about $3\frac{50}{100}$ a year. Witness's lot adjoins the river, which gives a great advantage in landing fuel, shipping bricks, and procuring water for tempering the clay. The demand for bricks for many years past, has been mainly from the trade upon the river. Witness was present when Robert Brockett, jun., bought, at a public sale of his father's effects, after his death, the said clamp, which was filled with unburnt bricks.

Joseph Dudley, being first duly sworn, says: He has known the the said "brick yard lot" for 26 years; he helped to repair the said clamp for R. Brockett, jun'r; it is upon St. Asaph street, to the west of the lot; he has never known the lot to be used or occupied for any purpose since old Mr. Brockett's death, nor has it ever been enclosed to witness' knowledge. Witness is a bricklayer.

James Henderson, being first duly sworn, says: He is a bricklayer; has known the lot in question for about 20 years; does not know the precise situation of the clamp; has seen bricks burnt in it; the lot has not been used for brick making since the death of R. Brockett, sen'r.

The foregoing testimony was given and sworn to before, and written down by me, this 3d of June, 1843; and the same is correctly and fully set down.

R. JOHNSTON, *M. C.*

No. 3.

Testimony taken before Reuben Johnston, master commissioner, 3d June, 1843, in the matter of the petition of Robert Brockett, referred to him in the suit of Brockett and als. vs. Brockett and als.

Mrs. Dolly Williams, being first duly sworn, says: She was well acquainted with Elizabeth Brockett, and lived very near the house on Brockett's alley, where Robert Brockett, sen'r, died; lived there at the time of his death, and until after Elizabeth Brockett left the house; witness remembers that Elizabeth Brockett told her that she had been cast in her suit against Robert Brockett; that she had just come from the court-house, where the case was decided; and that Robert Brockett was coming down to turn her out of the house; she then immediately moved her furniture and things out of the house, and brought them to witness's house; that Elizabeth Brockett lived in said house from Robert Brockett's death until said removal; that Robert Brockett, jr., never, as far as she knows, came down to turn her out.

Issabella Hyle, being first duly sworn, says: She lived in a part of the same house in which Mrs. Williams resided as aforesaid, at the time of the death of Robert Brockett, sen'r; well knew Mrs. Elizabeth Brockett, who continued to live in the house in which R. Brockett died, from the time of his death, until the decision of her suit against R. Brockett, jr., about which she told witness pretty much the same as she told Mrs. Williams, as above stated; that immediately after telling witness about the suit, she began moving from the house, saying that R. Brockett, jr., would turn her out forthwith.

Catherine Arnold, being first duly sworn, says: She lived in the lower part of the same house with Mrs. Elizabeth Brockett, the house in which R. Brockett, sen'r, had before died; rented said part from Mrs. E. Brockett after his death, and paid her $4 a month for it; Mrs. E. Brockett occupied the upper part of the house for several years after Mr. Brockett's death.

The foregoing testimony was given and sworn to before, and written down by me, this 3d of June, 1843, and is fully and fairly set down. R. JOHNSTON, *M. C.*

Depositions.

ELIZABETH BROCKETT, and others,
vs.
ROBERT BROCKETT, and others.

Circuit court of the District of Columbia, sitting in chancery for the county of Alexandria.

Interrogatories propounded by the complainants to Edmund I. Lee, James English, James Dixon, John Lawson, Charles Scott, Charlotte Jacobs, Geo. W. Carlin, and others, in this case.

1st. Were you acquainted with the late Robert Brockett, sen'r,

of the town of Alexandria, in the District of Columbia? And if yea, state how long you knew him.

2d. State whether you knew Elizabeth Brockett, one of the complainants, and how long; and whether you ever heard the said Robert Brockett, when living, acknowledge her to be his wife; and if so, how long before his death, and from what time?

3d. What do you know relative to said Robert Brockett acknowledging the said Elizabeth Brockett to be his wife, and so calling her; and also, all you know relative to said Robert and said Elizabeth's acknowledging that they were man and wife, during the life time of said Robert.

4th. What do you know relative to the said Robert Brockett's acknowledging the complainants named in the bill of complaint in this case to be his children, born from the said Elizabeth Brockett, their mother; also, state what you know relative to said Elizabeth's reception and acknowledgment in the family of said Robert, as his wife.

5th. In what place did Robert Brockett and the said Elizabeth reside, when you first became acquainted with them?

6th. What was the conduct of said Robert Brockett towards the complainants, his children, and where did said children reside, and with whom, at the death of said Robert; if they resided with said Robert Brockett, how long had they so resided, and how did he treat them, and act towards them?

7th. What became of said children, the complainants, after the death of said Robert Brockett; what character did said Elizabeth sustain, after her cohabitation with said Robert; was she or not faithful and attentive to him as a wife?

8th. Have you or not knowledge of any instruments of writings, deeds, &c., or inscriptions in which, or on which, the said Elizabeth Brockett has made acknowledgments, and been so requested to do by the said deceased Robert Brockett, as his wife, for the purpose of relinquishing her dower, or otherwise, as the wife of said Robert Brockett; and if yea, state where said instruments can be found, and please to refer to the same. Have you knowledge of any inscriptions by orders of said Robert, in which she is called his wife?

9th. State whether the said Robert Brockett and the said Elizabeth Brockett did, or not, reside together and cohabit as man and wife; and whether or not they had any children born during their said cohabitation as man and wife; and whether any of said complainants were such children or not, and which of them; and, also, whether or not the said Robert Brockett, deceased, did or not acknowlege the said children to be his, born from his said wife Elizabeth Brockett, called by him.

10th. State whether or not said Robert Brockett, or said Elizabeth, the mother of said complainants, did live together as other men and their wives did, or whether or not said Robert Brockett, deceased, did treat and act towards said children, the complainants,

as if they were his legal children, born from a marriage with their mother; whether or not he educated them as such, or whether or not he was in the habit of calling Elizabeth Brockett, the mother of the complainants, his wife in common conversation, when speaking of her; and whether or not you ever heard him call her wife, or Mrs. Brockett, and if so, upon what occasion, and how long before his death.

11th. State any other matter or thing that you know relative to said Robert Brockett's acknowledging said Elizabeth to be his wife, and her being so reputed and regarded in the neighborhood, and her children to be his; and particularly whether, in the presence of said Robert Brockett, you ever spoke to or of said Elizabeth as the wife of said Brockett, or called her Mrs. Brockett, or whether or not you heard other persons do it, and whether or not said Robert assented to the same, was silent, or what his conduct was upon such occasions.

BRENT & BRENT, *for complainants.*

ELIZABETH BROCKETT & als.
vs. } In chancery.
ROBERT BROCKETT & als.

Circuit court of the District of Columbia, for the county of Alexandria.

In virtue of the annexed commission to me directed, by the honorable the circuit court of the District of Columbia, for the county of Alexandria, in the above cause, I caused to come before me, as therein directed, the witnesses on behalf of the complainants, whose depositions are hereafter given, at my office in the town of Alexandria, in the county of Alexandria, in the District of Columbia, at 10 o'clock, A. M., upon this 28th day of September, 1839, in conformity with previous notice, given according to agreement between all the parties, and in the presence of Brent and Brent, attornies for the complainants, and Robert I. Taylor and Thomas Semmes, attornies for the defendants, I proceed to take the following depositions of said witnesses.

James Dixon's deposition.

James Dixon having been first sworn as the law directs, answers as follows to the interrogatories propounded on the part of the complainants.

1st. *Answer to first int.* He was acquainted with Robert Brockett, senior, knew him well, from August, 1827, to the time of his death, in March, 1829; I lived in his family the winter of 1827–'8 and 1828–'9.

2d. *Answer to 2nd.* He knew Elizabeth Brockett for the same length of time, and have repeatedly heard him call her Mrs. Brockett. They lived together, and he treated her as his wife.

3d. *Answer to* 3*rd.* This is answered by answer to 2d interrogatory.

4th. *Answer to* 4*th.* He has heard Robert Brockett, sen'r, acknowledge the three children named in the bill by Elizabeth Brockett to be his, was received and treated in the family of said Robert as his wife.

5. *Answer to* 5*th.* In Alexandria.

6. *Answer to* 6*th.* His conduct to his said children was that of a father, they lived with him and their mother in the same house, and he sent them to school.

7. *Answer to* 7*th.* They lived with their mother in the same house that was occupied by their father, he thinks a year or more after his death, after that time they went to the city of Washington, said Elizabeth was faithful and attentive to said Robert, and acted as a wife generally does.

8. *Answer to* 8*th.* Knows nothing of any written instruments. I have some recollection of an inscription on a tombstone erected by Robert Brockett, sen'r, over his first wife, in which a reference was made to the mother of Elizabeth Brockett, as his (Robert Brockett, senior's) mother-in-law, but can't say what.

9. *Answered* in answers to previous questions.

10. *Answer to* 10*th.* Answered in answers to other questions.

11. *Answer to* 11*th.* She was commonly called Mrs. Brockett by every person in the neighborhood, and he frequently heard her called so in the presence of Mr. Brockett, who called her so himself.

Cross-examined.

Question 1*st.* Do you know what was the name of Elizabeth Brockett before she cohabited with Robert Brockett?

Answer. I am not positive, but am inclined to think that Church was her maiden name.

Question 2*d.* Did you ever hear of her having been married, or ever hear her say she had been married, before her cohabiting with Robert Brockett? If yea, to whom?

Answer. I have heard her say she had been married before cohabiting with Robert Brockett to a Mr. Moreland or Molen, to the best of my memory.

Question 3*d.* Did she say who Molen was, and what had become of him?

Answer. Yes. She said that he had enlisted in the United States army. I think she stated that he had been absent such a length of time as entitled her to take another husband.

Question 4*th.* Did you ever hear her say that she was married to Robert Brocket; and if so, when, and where, and by whom?

Answer. She stated to me that she was married to Robert Brockett during the late war, in July, 1814. That she and Robert Brockett had left this town in a gig on the 4th of July, 1814, and went to a friend of hers that night, by the name of Tinly, (having spent

the day of the 4th with Captain Deneale.) The next day, (the 5th,) they went to Fairfax Court House, where they were married. Don't think she mentioned any particular house where they we e married. She said she was married by a travelling or itinerant preacher belonging to Kentucky.

Question 5. Did she say she was married at Fairfax Court House, or Fairfax Old Court House.

Answer. I can't say particularly; she might or she might not have said the Old Court House.

Examination in chief resumed.

Question 1*st*. In the conversation you state to have had with Elizabeth Brockett relative to her marriage, did she or not state to you at the same time that she had reason to believe that Moreland was dead, and what did she say?

Answer. I don't recollect hearing her state any thing about his death; she stated that he had been absent such a length of time, that she was entitled by law, owing to the lapse of time, to marry again.

Question 2*d*. Are you positive that she told you she was married in 1814?

Answer. She stated it was during the war; that a few days after the marriage, Mr. Brockett went to see his son Robert, who was then with the troops over the river in Maryland.

Question 3*d*. Did you ever hear a doubt expressed as to the marriage of Robert and Elizabeth Brockett, before the death of Robert Brockett?

Answer. Yes, I have heard a doubt expressed before his death by Mr. Wilson, who married his eldest daughter, and who was not on good terms with Robert Brockett, having run away with his daughter and married her against his consent, and who is now dead. Wilson is the only individual, I recollect, having expressed such doubts. On reflection, Mrs. Harris, wife of James Harris, expressed such doubts to me before Robert Brockett's death; never heard Robert Brockett express doubts before his father's death, but have since.

Cross examined.

Question 1. Did you ever hear said Elizabeth Brockett called by any other name than Mrs. Brockett?

Answer. I never heard her called by any other name.

JAMES DIXON.

Harrison Bradley's deposition.

Harrison Bradley, being first duly sworn, in answer to interrogatories put by complainants, deposes as follows:

1. *Answer* 1*st*. I was acquainted with him as long ago as 1821.

2. *Answer* 2*d*. I knew this lady; did not know what her name was. It would seem Mr. Brockett recognized her as his wife, but never heard him say she was his wife. Recollect having once made a sofa for him, and he and this lady walked with me down street

to select some moreen to cover the sofa; as far [as] I knew she was considered his wife. I knew nothing to the contrary, and was not very intimate in the family; but have seen her there living with her children. Have seen them, to all appearance, living as man and wife. I think I have heard some doubts expressed of their marriage before.

Answer 3*d*. He thinks he has heard the marriage doubted before the death of Robert Brockett, but he cannot say by whom; there were flying reports of this kind, as he thinks. He is informed that since the death of Robert Brockett, he has heard reports that he had not been married to the complainant, Elizabeth.

HARRISON BRADLEY.

Deposition of James English.

James English, being first duly sworn, in answer to interrogatories put by complainants, deposes as follows:

1. *Answer* 1*st*. I knew Robert Brockett for ten or fifteen years before his death.

2. *Answer* 2*d*. I knew Elizabeth Brockett for seven or eight years before Rob. Brockett's death. Mr. Brockett introduced me to her once at his house, to the best of his recollection, in the following manner: "I believe you are not acquainted with my wife, or with Mrs. Brockett." I do not recollect which he used, and introduced me to her as Mrs. Brockett; he is positive he called her *Mrs. Brockett*. They lived in the same house, and he always understood they were man and wife. At my public house he has spoken of her as Mrs. Brockett, and has spoken of Mrs. Brockett and the children as being well, in reply to enquiries made of him as to the health of the family. This was some four or five years before his death, and has occurred frequently. I never heard any thing said about the marriage until after Robert Brockett's death.

3. *Answer* 3*d*. Answered by answer to 2d.

4. *Answer* 4*th*. I recollect once particularly, Mr. Brockett was conversing with Joshua Doings, and said he had done all he intended to do for his elder children, now he was going to work for the younger ones. I understood him to mean by younger, his children by complainant, Elizabeth.

JAMES ENGLISH.

George W. Carlin's deposition.

George W. Carlin, a witness on behalf of complainants, being first duly sworn, deposes as follows, in answer to interrogatories:

1. *Answer* 1. I was well acquainted with him; knew him upwards of twenty years.

2. *Answer* 2. I first knew her after I had grown up; in 1817, I had frequently to pass by the house where Mr. Brockett and complainant Elizabeth lived. Have known her from 1817 to the present time. I have frequently heard Robert Brockett speak of her

as his wife, and never heard him speak of her in any other way. I never was particularly intimate in the family, except as a teacher, he having frequently spoken to me about sending his children to school. She was always recognized by him as his wife, and the children as his children, and they lived together in the same house as man and wife.

Interrogatory by complainants.

State whether you ever had a conversation with Robt. Brockett, senior, and his wife at the same time, or with either in the presence of the other, relative to their marriage, and what was said in that conversation?

Answer. I have heard them both refer to their marriage. I have heard her speak of it frequently, and have heard him, I think, speak of it once or twice; that they went to Fairfax Court House to be married, and were married there; not certain as to the time, but think it was between 1813 and 1817. He is positive he has heard them both say they were married. The last conversation I had with Robert Brockett was just before his last sickness, and relative to his children.

G. W. CARLIN.

Deposition of E. I. Lee.

Edmund I. Lee, a witness on behalf of complainants, being first duly sworn, deposes as follows, in answer to interrogatories:

Answer 1. I knew Robert Brockett, senior, from 1792 till his death.

Answer 2. I knew a person who lived with Mr. Brockett, who was called his wife, (when he lived at the corner of Washington and Queen streets;) the complainant, Elizabeth, was the person referred to. She was always called Mrs. Brockett; I never heard her called by any other name; they lived together as man and wife.

The 3d, 4th, 5th interrogatories of complainant, he answers as [he] has done to the second.

Answer 6. I never heard it said, till after his death, that she was not his wife, and he never heard it said that he was otherwise than kind to his children.

Answer 7. Knows nothing.

Answer 8. I know of no deed executed by Robert Brockett in which Elizabeth is a party, except one. I have searched the records since 1801, and find but three deeds executed by Mr. Brockett. One is to Alexander Veitch and John Patten, to which his wife is not a party; another one is to my brother, Charles Lee, in which his wife, called Anabella, is a party; the third deed is one from Robert Brockett and Elizabeth, purporting to be his wife, to Robert Brockett, jun., one of the defendants, with her privy examination to it, a copy of which is appended to this deposition, marked A. Said deed is dated Augt. 18th, 1819.

EDMUND I. LEE.

James Phillip's deposition.

James Phillips, a witness on the part of complainants, being first duly sworn, deposes as follows, in answer to interrogatories:

1. *Answer* 1*st*. I knew Robt. Brockett well for twenty years prior to his death.

2. *Answer* 2*d*. I knew the complainant, Elizabeth, when she was Mrs. Molen, before Robert Brockett married here. I think I recollect the day they both started to get married from her house on Duke street, now occupied by Mr. Devaughn. Report said they went away to get married, and I recollect when they came home, they went to Robert Brockett's house. I was there present, when they had a wedding party, and she always passed as Mrs. Brockett from that time. Witness supposes he was at the house five hundred times, or a great number of times, as he lived in the same row in Brockett's property for thirteen years, and was very intimate. During all that time they lived together as man and wife, had children, and he called her always Mrs. Brockett. Never heard their marriage doubted 'till after Robert Brockett's death. During this time, I always found her a kind and attentive wife, particularly so. She was received and acknowledged as his wife in the family. Does not remember seeing Robert Brockett, the son, there. Don't think he was there; but has seen him there since. *I think* Robert Brocket, junior, always acknowledged her as the wife of his father. He always called [her] Mrs. Brockett. Don't know whether or not Robert Brockett, junior's, wife visited her.

JAS. PHILLIPS,
By JNO. LAWSON.

Charlotte Jacob's deposition.

Charlotte Jacobs, a witness on behalf of complainants, being duly sworn, deposes in answer to interrogatories, as follows:

Answer 1. I knew him; was acquainted with him.

Answer 2. Was acquainted with her before she was his wife, and afterwards.

Answer 3. Before they were married, she dealt at our store; after I heard they were married, I called to see them; when I went in, Mr. Brockett introduced me to her as Mrs. Brockett, his wife; after that I frequently called by there, and he always in my presence treated her as his wife; they lived together in the same house like man and wife; he treated her with as much respect as any man would his wife; the complainants, children of Elizabeth Brockett, were born during the time she and Robert Brockett lived together as man and wife.

Answer 4. I never was there when any one was present, except complainant Elizabeth, and Robert Brockett, and then she was treated as wife of said Robert, and head of the family; and that Robert Brockett, junior, and his wife, have often stated to me that

they had been to his father's to dinner. I never heard their marriage doubted, until after the death of Robert Brockett.

CHARLOTTE JACOBS.

All exceptions both to the form of the interrogatories, and to the substance of the evidence are reserved to all parties, all objections to notice and commission waived.

TH. SEMMES, *for defendants.*
BRENT & BRENT, *for complainants.*

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

I do hereby certify, that the aforegoing depositions were taken in the presence of the attornies aforesaid of both parties, at my office, in the town of Alexandria, in the county of Alexandria, in the District of Columbia, as stated to me by said attornies to have been so agreed, at the hour of 10 o'clock, A. M., upon this 28th day of September, 1829, except the deposition of Mr. Jacobs, which, by the consent of all parties, was taken in the presence of the aforesaid attornies, at her own house in said Alexandria. Given under my hand, this 28th day of Sept'r, 1839.

CHARLES McKNIGHT,
Justice of the peace for the county of Alexandria.

Fees—$5.

Agreement of counsel.

ELIZABETH BROCKETT, and als,
vs.
ROBERT BROCKETT, and als.

It is hereby agreed by the parties in the above cause that all the depositions and certificates, filed in the suit of Elizabeth Brockett against Robert Brockett's heirs for dower, and all the depositions on file in the case of William Brockett and others, against Robert Brockett and others, in the orphan's court, may be used as evidence in the above cause, waving exceptions to form, and reserving exceptions to substance.

R. I. TAYLOR, *for R. B. & C.*
TH. SEMMES, *for Wm. Ball, wife and Wilsons.*
BRENT & BRENT, *for complainants.*

Alex'a, Sept'r 28, 1839.

Depositions.

ELIZABETH BROCKETT and others,
vs.
ROBERT BROCKETT and others.

Circuit court of the District of Columbia, for the county of Alexandria. In chancery.

Interrogatories on the part of the complainants, propounded to James Caden, Deborah Thomas, Elizabeth Fortney, Robert Boyd, John Philips, Abraham Butler, and others, &c.

1st. State whether you are acquainted with the complainants and defendants.

2d. State whether you were acquainted with the deceased Robert Brockett, sen'r, of the town of Alexandria, and with Elizabeth Brockett, his wife; and when you first became acquainted with each, and how long since.

3d. State what you know of the said deceased Robert Brockett, and the said Elizabeth Brockett, the mother of the complainants, William, Annabella, and Elizabeth, cohabiting and living together as man and wife, and if so, state what you do know relative thereto.

4th. State what you know of the capacity and character, in which the said Elizabeth, sen'r, was received and acknowledged in the family of the said Robert Brockett, deceased.

5th. State in what relation the said Robert Brockett, dec'd, and the said Elizabeth, sen'r, stood to each other, and what did they declare they were as to one another.

6th. State when the said William, Annabella, and Elizabeth, (children) were born; and whether they were born of said Elizabeth the mother, and whether it was previous, during, or subsequent to, the said Robert and Elizabeth's cohabiting together as man and wife.

7th. State whether you ever heard the said Robert Brockett, dec'd, say any thing relative to the said William, Annabella and Elizabeth, sen'r, and what did he say?

8th. State whether you know in what capacity and character, and how, the said Robert Brockett treated the said Elizabeth whilst they cohabited together.

9th. State whether you have any knowledge of Robert Brockett, junior, and his wife visiting the family of said Robert Brockett, sen'r, and said Elizabeth.

10th. State what was the conduct of Robert Brockett, jun'r, towards the said Elizabeth, sen'r, during the time she cohabited with his father as his wife; did he or not act towards her as if she was the wife of his father, and his step mother?

11th. State whether you had any conversation with said Robert Brockett, sen'r, as to the manner, and to whom he intended to leave his estate, and what that conversation was?

12th. State whether you had any conversation with said Robert Brockett, sen'r, relative to his said wife or children shortly before his death, and what did he say in said conversation relative to them, or either of them, as his wife or children.

13th. State what the conduct of said Elizabeth Brockett was, towards said deceased, and in his family.

14th. State what was the conduct of said Robert Brockett, sen'r, towards said William, Annabella, and Elizabeth, his children.

15th. State any other matter or thing you know, that will be material in this case.

BRENT & BRENT, *for complainants.*

ELIZABETH BROCKETT, and others,
vs.
ROBERT BROCKETT, and others.

Circuit court of the District of Columbia, for the county of Alexandria. In chancery.

In virtue of the annexed commission to me directed, and in compliance with a previous notice, and the agreement of all the parties, in the aforegoing cause, I proceeded to take the depositions of the witnesses hereafter named, at 10 o'clock, A. M., upon this 4th day of October, 1839, at the office of Brent and Brent, in the city of Washington, in the District of Columbia, in the presence of said Brent and Brent, who appeared as counsel for the complainants, and of Thomas Semmes, esquire, who appeared as counsel for the defendants, and also in the presence of Robert Brockett, jnn'r, and William Ball, two of the defendants, and William Brockett, one of the complainants.

Deborah Thomas' deposition.

Deborah Thomas, having been first duly sworn, deposeth and saith, in answer to the interrogatories propounded by the complainants.

In answer to the 1st. I am.

In answer to the 2d. I have known Robert Brockett and Elizabeth, the wife, for upwards of twenty years; I knew them in Alexandria, D. C.

Answer to 3d. Mr. Brockett and my husband were very well acquainted. Mr. Brockett frequently come to see Mr. Thomas on business. The way I got acquainted with mistress Brockett, was by going to Mr. Brockett's house for two or three days at a time; I have frequently visited her, and staid there for two or three days at a time. They lived together in the same house as man and wife, as other people who were married, from my first acquaintance up to the time of Mr. Brockett's death. I have slept there many a night, and spent many an evening there; he always treated her as his wife, and always called her his wife.

Answer to 4th. She was in the character of a mother; she acted exactly as a mother and a wife, and she was so received and acknowledged in the family.

Answer to 5. As man and wife.

Answer to 6. They were born when Mr. Brockett and Elizabeth the mother lived together as man and wife.

Answer to 7th. I have heard him say they were his children. He acknowledge[d] them to be such, and thought a great deal of them.

Answer to 8th. Answered by answer to 4th and 5th.

Answer to 9th. I have reason to believe they visited there, but I never was there at the same time.

Answer to 10*th.* I was there once when Robert Brockett, junior, was at his father's. He did not come into the room where I was. He, Mr. Robert Brockett, junior, was going to turn out with the military that day. I cannot say that I ever saw Mr. Robert Brockett, junior, in company with Elizabeth the mother, but have every reason to believe that he and his family were intimate with her.

Answer to 11*th.* I had a conversation with him. I have heard him say, many times, that he intended to leave his property to the three children by Elizabeth, he having given Robert Brockett as much, or more, than he intended.

Answer to 12. The last conversation took place about nine or twelve months before his death. He said that Betsey, his wife, should be supported out of the income; and he said that Maria, her daughter, before she was married to Mr. Brockett, should be supported out of the income too. He said that, after the death of said Elizabeth, the property was to go to his three children by her.

Answer to 13*th.* It was as kind and attentive, and as faithful, as I ever saw a wife.

Answer to 14*th.* He was very kind to them, and wished them to be brought up genteelly, and have good educations.

Answer to 15*th.* I know nothing more that I recollect of.

Cross examined.

Interrogatory 1*st.* In your answers to the 9th and 10th interrogatories of complainants, you say that you have reasons for believing that Robert Brockett, junior, and his family, were intimate with Elizabeth, the mother of the complainants; please to state what those reasons are or were.

Answer to 1st. I have been *informed of it frequently* by very decent people—by the neighbors—but I can't give the names of my informants, not recollecting them.

In. 2. Please to state, as nearly as you can recollect, the year, and season of the year, the military parade that you speak of in your answer to the 10th interrogatory of complainants occurred, or was to have occurred.

Answer to 2*d.* It has been, I reckon, about twenty years ago.

In. 3*d.* Had Robert Brockett, junior, a military uniform on at the time referred to? Did he wear a sword, or had he a gun with him?

Answer to 3*d.* He had on a military uniform, but I can't say whether he had a sword or gun.

In. 4*th.* In your answer to complainant's 12th interrogatory, you state a conversation you had with Robert Brockett, senior, about how he intended to leave his property; did he tell you whether he had made a will, or was going to make one? Did he tell you whether or not he intended to leave his son Robert any thing, and what; and was or was not the Maria referred to by you married or not at the time of that conversation?

Answer to 4*th.* He said that his intention was to leave a will, but

he did not say whether or not he had written it. He said that he had given Robert more than he was entitled to, and that he did not intend to leave him any thing. The Maria referred to was Maria Molden, and she was not married at that time.

Complainants' examination resumed.

1*st in.* On your visits, spoken of before, to the family of Robert Brockett, sen'r, who presided at the head of the table as the mistress of the family?

Answer. Mrs. Brockett.

2 *in.* On such occasions was she treated by Mr. Brockett as his wife, and so called?

Answer. She was. And further deponent saith not.

DEBORAH THOMAS.

Elizabeth Fortney's deposition.

Elizabeth Fortney, being first duly sworn, answers to the interrogatories propounded as follows:

To the 1*st.* I am.

To the 2*d.* I was acquainted with them, but do not recollect how long since.

To the 3*d.* They did live together as man and wife, from the time it was said they were married till his death; they went off to be married, and returned, I think, next day. They went off in a gig together from her house; I won't be certain whether they returned to her house or his, but I saw her at his house a day or two after.

An. 4. She was received and acknowledged as his wife.

An. 5. As man and wife; they stood in that relation to each other, and so declared themselves to be.

Answer 6. They were born during the time they cohabited together as man and wife.

Answer 7. He always owned them, and acknowledged them to be his children by the said Elizabeth.

Answer 8*th.* Answered by 4th and 5th.

Answer 9*th.* I have been told so by Elizabeth Brockett, I never saw them there.

Answer 10*th.* He acted towards her as his mother, so far as I know; I have seen them together, and he treated her and respected her as his mother.

Answer 11. I never had any such conversation.

Answer 12. It has been fourteen (14) years since I last saw Mr. Brockett, sen'r.

Answer 13. I was a next door neighbor of theirs for 14 years. She always treated him kindly, faithfully, and affectionately; as much so as any wife.

Answer 14. He always treated them as kindly and affectionately as I ever saw a father do.

Answer 15. He acknowledged her as his wife.

Cross-examined.

Int'y 1st. How old are you?

Answer. About 40 years old.

In. 2d. In what year did Robert Brockett, sen'r, and Elizabeth go off in a gig together, as it was said, to be married; in what month was it?

Answer. I do not recollect the year and month, but think it was in July. And further deponent saith not.

her
ELIZABETH x FORTNEY.
mark.

James Caden's deposition.

James Caden, by consent, is asked only a general question as to his knowledge.

I knew Robert Brockett and Elizabeth Brockett, senior, since 1825 to his death. I know the complainants, the three children. They went to school to me; were put there by their father, who told witness they were his children. I visited at his house in Alexandria, on Prince street, in the year 1825, and he introduced me to said Elizabeth as Mrs. Brockett; from the manner of the introduction, I understood her to be his wife; he introduced her to me as I would introduce my wife to a gentleman. They were living together, in the same house with their children, as man and wife; and they lived as man and wife to the day of his death. Mr. Brockett expressed great anxiety about his children, particularly the girls, that he might live to see them settled, or done for. I had a conversation with Mr. Brockett at my house in the fall of 1828, I think, in which he told me that he did not intend to leave his son Robert any thing. And further deponent saith not.

JAMES CADEN.

Robert Boyd's deposition.

Robert Boyd is, by consent, asked a general interrogatory. He knew Robert Brockett, sen'r, and Elizabeth, senior, and the three children, the complainants. Became acquainted with Mr. Brockett first at Mr. Lawson's; was introduced to him by Lawson; as I was a Scotchman, Mr. Brockett insisted on my going home with him, and said that he would introduce me to his wife and children. This was in the fall of 1826; I went with him to his house, and was introduced to said Elizabeth as his wife, and I visited there frequently. I have dined there; have staid all night. She was officiating in the character of a wife; set at the head of the table, &c.; was acknowledged and treated by him as his wife. He introduced me to his son Robert as the son of his first wife. He stated that he married his first wife in Ireland, and, to the best of his recollection, his second wife, Elizabeth, in *Alexandria*, or the *neighborhood*. They cohabited together during the period I visited there, which

was two or three years, as man and wife. The complainant, William, I am certain was one of the children I saw in Mr. Brockett's house. And further deponent saith not.

ROBERT BOYD.

Commission adjourned by the consent of all parties, to meet again at half past three o'clock, P. M., same day.

B. K. MORSELL, *Comm'r.*

Half past three o'clock commission met according to adjournment.

B. K. MORSELL, *Commissioner.*

John Phillips' deposition.

John Phillips, being first duly sworn, deposes in answer to complainants' interrogatories—

Answer 1. I am acquainted with the parties.

Answer 2. I was acquainted with Robert Brockett, deceased, and with Elizabeth Brockett, his wife. I became acquainted with Mr. Brockett thirty years ago. I was a neighbor of his for twelve or fourteen years before his death. I became acquainted with Elizabeth Brockett two or three years, or longer, before he married her in the town of Alexandria.

Answer 3. They cohabited and lived together as man and wife. I know that it was said that they went away to get married, and that they returned and went to house-keeping together. He told me before he went away, that he was going to be married. I saw him on the way. Elizabeth Brockett was with him. *John Greenwood told me that he went with them.* They returned, I believe, the next day, or a day or two after. I was at their house in about a week afterwards. I was frequently in company with him. When I first went there after they were married, he introduced me to her as his wife, and had something to drink to welcome the thing, namely, that he had got home and had got a wife. They lived together as man and wife, from that time till his death, and I never heard it disputed.

Answer 4. She was received as a wife, and acknowledged as such.

Answer 5. Man and wife.

Answer 6. The complainants William, Annabella, and Elizabeth, were born subsequent to the said Robert and Elizabeth, senior, cohabiting together as man and wife.

Answer 7. He said that they were his children by her, and he acknowledged them as such.

Answer 8. Answered by 4th and 5th.

Answer 9. I have seen them together, and have been at the house with them frequently.

Answer 10. He did.

Answer 11. I never heard him say more than this, namely, that he had given Robert about as much as he intended for him.

Answer 12. I never heard him say any thing about it shortly be-

fore his death. I visited him the day before he was taken sick with his last illness; but did not visit him again.

Answer 13. Very affectionate, kind, and faithful—very much so.

Answer 14. Very kind and very civil to them, always appeared to set a great deal of store to them.

Answer 15. I don't know any thing else that could be of service to complainants.

Cross examined.

Interrogatory 1. Did you ever reside in Fairfax county, Virginia? If yea, when, and for how long a time, and who was your nearest neighbour?

Answer. I resided in Fairfax county, Virginia, about thirty-one or two years ago, but can't say exactly. I lived there about two years. A man by the name of Rhodes was my nearest neighbour.

In. 2. State as nearly as you can, who were your near neighbours in Fairfax?

Answer. Mr. Trammell, Thos. Trammell I mean, the family of the Slacums, Mr. Thompson, Mr. Glover, Thos. Williams. I lived on the old Leesburg road, on land I leased from John Ball, uncle of William Ball, one of the defendants.

In. 3. Do you know George Territt, senior, of Fairfax county, commonly known as Captain George Territt? If yea, state how far his farm and residence was, at the time you lived in Fairfax county, from the land you leased of Mr. Ball, and then lived on.

Answer. I did know, and still do know, Captain George Territt, he lived about two or three miles from me, when I lived in Fairfax county.

In. 4. Where did you move to when you left Fairfax?

Answer. I moved to Alexandria, where I have lived the greater part of the time.

In. 5. Had you a written lease from John Ball?

Answer. I had a written lease for twenty-one years. I don't recollect the amount of rent reserved, nor of how many acres it was.

In. 6. Why did you not live on the leased premises until your term of twenty-one years had expired?

Answer. I sold out my lease.

In. 7. To whom did you sell the lease?

Answer. I sold out to John Ball, my landlord.

In. 8. What did John Ball pay you for the lease?

Answer. He was to give me one hundred dollars, part of which he paid me.

Examination in chief resumed.

In. 1. Were you or not applied to within the last week, by any one of the defendants in this cause, and by which of them, to testify on behalf of the defendants; and what was said to you, and by you?

Answer. William Ball, the husband of Walter Ann Brockett, and one of the defendants, asked me some questions, whether I had ever heard it disputed whether Robert Brockett, senior, and said Elizabeth, senior, were or were not married? I answered, I never did. He said he wanted me as an evidence, but he had better let me alone, as I would do him more harm than good. He said that he was in hopes the other party would not run a foul of me. That is all that passed.

In. 2. State whether you were very intimate with Robert Brockett, senior, and his family.

Answer. I was as much so as any man in the town of Alexandria.

In. 3. State whether Elizabeth Brockett, the wife of Robert Brockett, senior, lived by herself, with her children by a former marriage, before her marriage with the said Robert Brockett, and by what name was she called.

Answer. She did. She was called Betsey or Elizabeth Molden.

In. 4. During the time you were acquainted with her, previous to her marriage with Robert Brockett, was she residing with any person as her husband?

Answer. With no one.

Cross examination resumed.

1*st.* Were you present in the office of William L. Brent, esquire, this morning (October 4, 1839,) when the depositions of Deborah Thomas, and Elizabeth Fortney, and James Caden, and Robert Boyd, were taken in this cause; and did you observe and take notice of the evidence as given by them.

Answer. I was. I did not take notice of their evidence.

2*d In.* Were you ever applied to by the complainants, or any of them, or by any one on their behalf, to give evidence in this cause.

Answer. William Brockett applied to me on the day before yesterday to give evidence in this case.

JOHN his X mark PHILLIPS.

Abraham Butler's deposition.

Abram Butler sworn, deposes as follows to a general question put by consent:

I know the parties to this suit, and also knew Robert Brockett, senior, and Elizabeth Brockett. In 1822 I became intimately acquainted with Robert Brockett, senior, I had business with him, and rented a house of him. Mr. Brockett, senior, dealt with me for groceries, and sometimes he would say he would tell Mrs. Brockett to send for them. They called each other Mr. and Mrs. Brockett. They lived together in the same house as man and wife. William Brockett, complainant, was frequently with the old man whom he called his son, and often took the groceries home. I never had any conversation with Mr. Brockett about his intentions in regard to his property, and I know nothing further.

Further saith not.

ABRAHAM BUTLER.

All exceptions as to notice and commission waived. Exceptions reserved as to the forms of interrogatories and to the substance of the evidence.

TH. SEMMES, *for defendants.*
BRENT & BRENT, *for complainants.*

ALEXANDRIA, *Oct.* 4, 1839.

I certify that the foregoing depositions were taken, subscribed and sworn to before me, by the several witnesses therein named, at the office of Brent & Brent, in the city of Washington, between the hours of ten o'clock, A. M., and five o'clock, P. M., on the 4th day of October, 1839, in the presence of Brent and Brent, as attorneys for the complainants, and Thomas Semmes, attorney for the defendants, and also in the presence of William Brockett, one of the complainants, and of William Ball, Robert Brockett, jun'r, and John Wilson, three of the defendants.

B. K. MORSELL,
Justice of the peace for Washington county, in the District of Columbia.

Agreement of counsel.

We agree that the testimony already taken, in the case of Brockett and als. vs. Brockett and others, shall be considered as taken in the cause subsequent to fileing the amended bills of complainants, and that it shall not be necessary to retake said testimony.

BRENT & BRENT, *for complain'ts.*
R. I. TAYLOR, *for R. Brockett, jr.*

Reserving all legal exceptions heretofore taken.

Agreement of counsel.

WM. BROCKETT & others,
vs.
ROBERT BROCKETT & others.

Circuit court of the District of Columbia, for the county of Alexandria, in chancery.

Agreement.

It is hereby agreed, that the answer of Robert Brockett, sworn to on 7th May, 1839, shall stand as the answer of each and every defendant, summoned or appearing in the case of William Brockett and others vs. Robert Brockett and others, in the circuit court of the District of Columbia, for the county of Alexandria, sitting as a court of equity, and that the evidence already taken by the complainants or defendant or defendants, shall be considered the same as if it had been taken after the filing of the amended bill, and of the answers and the general replication to said answers, reserving to the complainants, at any time before a final decree, the right to require, by way of excepting to the answers filed, an account from the defendants as to the annual value of each piece of property or

real estate claimed in the bill, whether lying in Alexandria aforesaid, or in the State of Virginia; and that all the papers in the division of the real estate of deceased Robert Brockett, and such of the defendants who claim to be his only heirs-at-law, on file in the circuit court of the District of Columbia, for the county of Alexandria, may be read in evidence, so far as to shew that division of said estate had been made between the said defendants as named in said bill of complaint, and the answers thereto. It is farther agreed that the clerk do now enter general replications to defendants' answers with the above reservation, and that the cause be set down for hearing at the next October term; reserving to each party the right to take any further testimony deemed necessary, upon giving the proper notice, &c., between this and the meeting of the said October term; the said testimony by depositions to have the same effect, as if taken before said cause was set down for a hearing.

BRENT & BRENT, *for complainants.*
TH. SEMMES, *for R. Brockett, Wm. Ball and other defts.*
E. I. LEE, *for Robert Brockett.*

Record of partition.

Record in the suit for partition of Brockett vs. Wilson and als., referred to in the bill and answer.

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia for the county of Alexandria, the day of 1834.

ROBERT BROCKETT, complainant, against THOMAS K. WILSON, JOHN W. WILSON, GEORGE W. WILSON, WALTER S. WILSON, & WALTER ANN BROCKETT, defendants. } In Chancery.

Be it remembered that heretofore, to wit, at a court continued and held for the District and county aforesaid, the day of 1833, came the complainant, by Robert I. Taylor, his solicitor, and filed his bill; and on his motion Alexander Mooie is assigned guardian to the infant defendants Thomas K. Wilson, John W. Wilson, George W. Wilson, & Walter S. Wilson, and as guardian to the infant defendant Walter Ann Brockett, to defend this suit; and thereupon came the said infant defendants, by the said guardian, and filed their answers; and on the complainant's motion, and by consent of parties, this suit is now set down for hearing and decree on the bill of the complainant and the answers of the said defendants: and now coming on to be heard, it is by the court thereupon ordered and decreed that partition be made between the complainant and defendants of all the real estate whereof the

said Robert Brockett, the elder, died seized, according to the provisions of the statute regulating the descent of intestates' estates; that is to say, by assigning to the complainant, by certain metes and bounds, one equal third part of the said estate; and to the defendant Walter Ann Brockett, by certain metes and bounds, one equal third part of the said estate, to be held by them and their heirs, respectively, for ever hereafter, in severalty; and by assigning to the defendants, Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, one other equal third part of the said estate, to be held by them and their heirs for ever thereafter in coparcenary; and Adam Lynn, George Drinker, and John Adam are hereby appointed commissioners to make the said partition (any two of whom shall be competent to do so) who are required to return to this court during the present, or at the next term thereof, a report of the manner in which they shall make such partition, specifying, with all convenient certainty, the portions or dividends of the said real estate which shall be assigned to the parties to this suit under this decree; which bill is as follows:

Bill.

To the honorable the judges of the circuit court of the District of Columbia, sitting in chancery at Alexandria.

Humbly complaining, sheweth to your honors your orator, Robert Brockett, that Robert Brockett, (the elder,) late of the town of Alexandria, father of your orator, departed this life intestate, on or about the 29th day of March, 1829, seized of a considerable real estate situated in the town and in the county of Alexandria.

That besides your orator, the said Robert Brockett left the following descendants, and none other, that is to say, Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, infant children of Margaret Wilson, a daughter of the said Robert, who had intermarried with Isaac Wilson, and who departed this life before her father, and Walter Ann Brockett, an infant daughter of Walter Brockett, son of the said Robert, who died before his father.

That the said Robert Brockett, the elder, left no widow; and that his grand children before mentioned are yet under the age of twenty-one years.

That your orator is very desirous of having partition made of the real estate whereof his father died seized; and believes it would be beneficial to the heirs of the said Robert to have such partition made; but from the infancy of all the heirs, except your orator, no such partition can now be effected without the interposition of your honorable court, where such matters are properly cognizable; to the end, therefore, that the said infant grand children of the said Robert Brockett, the elder, may be made defendants hereto, and may have guardians assigned to them to defend this suit, and may by such guardians full, true, and perfect answer make to the

premises; and that partition may be decreed to be made of all the real estate whereof the said Robert Brockett, the elder, died seized; and that your honors may make such further and other decree in the premises as may be most consistent with equity and conscience, may it please your honors to grant to your orator the United States most gracious writ of subpœna to the said defendants directed, &c.

R. I. TAYLOR,
Solicitor for Complainant.

Answer of Walter Ann Brockett.—Answer of Walter Ann Brockett.

The answer of Walter Ann Brockett, the infant daughter of Walter Brockett, deceased, who was a son of Robert Brockett, the elder, deceased, by Alexander Moore, her guardian assigned to defend this suit to the bill of complaint, exhibited against her and others, before the circuit court of the District of Columbia, at Alexandria, by Robert Brockett.

This respondent admits, that her grandfather, Robert Brockett, the elder, departed this life intestate, seized of a considerable real estate in the town and in the county of Alexandria; that he left no widow, and that his only descendants are the complainants, the children of a deceased daughter Margaret Wilson, and this respondent, as stated in the complainant's bill.

She admits that the said Margaret Wilson and this respondent's father, died before the intestate Robert Brockett, the elder.

And this respondent is willing that partition of the real estate whereof the said Robert, the elder, died deized, should be decreed to be made according to the provision of the statute, regulating the descent of intestates' estates.

Answer of Thomas K. Wilson and others.

The answer of Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, infant children of Isaac Wilson and Margaret his wife, now deceased; which said Margaret was one of the children of Robert Brockett, the elder, late of Alexandria, now deceased, by Alexander Moore, their guardian assigned to defend this suit, to the bill of complaint exhibited against them and Walter Ann Brockett, before the circuit court of the District of Columbia, sitting in chancery at Alexandria, by Robert Brockett.

These respondents admit that their grandfather, Robert Brockett the elder, departed this life intestate, seized of a considerable real estate in the town and in the county of Alexandria; that he left no widow, and left no other descendants than the complainant, Robert Brockett, Walter Ann Brockett, a daughter of Walter Brockett, who was a son of the said intestate, and these respondents; they admit that their mother a daughter of the intestate, and the said Walter his son, died before their father.

And they are willing that partition of the real estate of the said intestate should be decreed to be made, according to the provisions of the statute regulating the descent of intestates' estates.

Final decree.

And at a court continued and held for the District and county aforesaid, the day of 1834, came the parties by their solicitors, and the commissioners, appointed by the decree of this court made in this cause at October term, 1833, to make partition of the real estate whereof Robert Brockett, the elder, late of Alexandria, died seized amongst his heirs, having returned their report, the same is received and confirmed by this court; and thereupon it is by the court decreed and ordered, that the said Robert Brockett, the complainant, and Walter Ann Brockett, one of the defendants, do forever hereafter hold the several shares and dividends of the estate of the said Robert Brockett, the elder, to them assigned according to the report of the said commissioners; that is to say, the said Robert Brockett and Walter Ann Brockett, one third each in severalty, as the same are described in the report; and the said Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, one third part in parcenary, as the same is described, in said report.

And it is further decreed, that the costs of this suit be paid one third each, by the said Robert Brockett and Walter Ann Brockett; and one third by the said Thomas K. Wilson, John W. Wilson, and Walter S. Wilson.

Leave is reserved to the infant defendants respectively, to shew cause against this decree at any time within six months after they shall have attained the age of 21 years.

Commissioners' report.—Commissioners' report.

To the honorable judges of the circuit court of the District of Columbia, sitting at Alexandria:

The undersigned, commissioners appointed by your honorable court to make partition and division of all the real estate of which Robert Brockett, late of Alexandria, died seized, amongst the heirs and representatives of the said Robert Brockett, having attended to the duty assigned them, respectfully report: That they have personally examined the several pieces or parcels of real estate of the said Robert Brockett, deceased, as contained in the schedule hereto annexed, marked A, and having duly considered the relative value of each, as regards location, improvements, and incumbrances, have made partition and division of the same, into three equal parts, as required by the proceedings and order of your honorable court hereto annexed.

And the said commissioners further report; that in making partition of the said real estate, they have allotted and assigned, and do hereby allot and assign, one equal third part of the said real estate, as described by the following metes and bounds, to wit: one lot with the improvements thereon, on the north side of Queen, and east side of Washington streets, in the town of Alexandria, begin-

ning at the intersection of said streets, running thence north, on the line of Washington street, eighty-three feet to an alley ten feet six inches wide; then east, on the line of said alley, and parallel to Queen street, sixty feet; thence south, parallel to Washington street, eighty-three feet to Queen street; thence west, on the line of Queen street, to the beginning; also, one other tenement and lot of ground in said town, beginning on the east side of a twenty foot alley, running from Queen to Princess streets, between Union and Water streets, at the line of Richard Conway and Robert Adams' heirs, running thence with said line eastwardly, and parallel to Queen street, fifty-two feet; thence northwardly, parallel to Union street, twenty-three feet six inches; thence westwardly, and parallel to Princess street, fifty-two feet to the aforesaid alley; thence southwardly, on said alley, twenty-three feet six inches to the beginning; also one half square of ground on the north side of Pendleton street in said town, beginning at the intersection of Pendleton and St. Asaph streets; running thence on Pendleton street eastwardly, to Pitt street; thence northwardly, on the line of Pitt street, one hundred and seventy-six feet seven inches; thence westwardly to St. Asaph street; thence southwardly, one hundred and seventy-six feet seven inches to the beginning; to Robert Brockett, one of the parties in the said proceedings mentioned, to hold the same to the said Robert Brockett, his heirs and assigns forever, in severalty.

One other equal third part as described by the following metes and bounds, to wit: A brick tenement and lot of ground on the south side of Prince street in said town, beginning at the intersection of Prince and Alfred streets; running thence westwardly, on the line of Prince street, one hundred and twenty-three feet five inches to an alley; thence southwardly on the said alley, and parallel to Alfred street, one hundred and seventy-six feet seven inches; thence eastwardly and parallel to Prince street, one hundred and twenty-three feet five inches to Alfred street; thence northwardly on Alfred street to the beginning; subject to a ground rent of sixty-six dollars sixty-seven cents; also one other lot of ground in said town lying on Fayette alley; beginning on the north side of said alley, thirty feet east of Water street, running thence eastwardly on the line of said alley ninety feet; thence northwardly, parallel to Water street, sixty-five feet seven inches; thence eastwardly, parallel to said alley, ninety feet; thence southwardly, parallel to Water street, to the beginning; to Walter Ann Brockett, also one of the parties in the said proceedings mentioned, to hold the same to the said Walter Ann Brockett, her heirs and assigns forever, in severalty.

And the remaining third part of said estate, as described by the following metes and bounds, to wit: one-half square of ground, with the improvements thereon, lying on the north side of Cameron street in said town, beginning at the intersection of Cameron and Colum-

bus streets, running thence, and binding on Cameron street, to Alfred street; thence northwardly, on the line of Alfred street, one hundred and seventy-six feet seven inches; thence, parallel to Cameron, eastwardly, to Columbus street; thence southwardly, on the line of Columbus street, to the beginning; subject to a ground rent of eighty-three dollars thirty-three cents. Also, one other lot, with the improvements thereon, lying on the north side of Duke street, and west side of Henry street in said town, beginning at the intersection of said streets, running thence, on the line of Henry street, northwardly, one hundred and seventy-six feet seven inches; thence westwardly, parallel to Duke street, one hundred and twenty-three feet five inches; thence southwardly, parallel to Henry street, one hundred and seventy-six feet seven inches, to Duke street; thence, on the line of said street, to the beginning. Also, one other lot of ground, with the improvements thereon, lying on Prince and Fayette streets, beginning at the intersection of said streets, on the south side of Prince street, and running thence, eastwardly, in the line of Prince street, one hundred and twenty-three feet five inches; thence southwardly, parallel to Fayette street, one hundred and seventy-six feet seven inches; thence westwardly, parallel to Prince street, one hundred and twenty-three feet five inches, to Fayette street; thence northwardly, on the line of Fayette street, to the beginning; which two lots are subject to a ground rent of forty dollars. Also, one tenement and lot of ground on the east side of Washington street, beginning one hundred and fifty-six feet seven inches to the north of Queen street; running thence northwardly, on Washington street, twenty feet; thence eastwardly, parallel to Queen street, one hundred and seventy-five feet, to an alley ten feet one inch wide; thence southwardly, with the line of said alley, and parallel to Washington street, twenty feet; thence westwardly, parallel to Queen street, to the beginning; to Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, also parties to said proceedings, their heirs and assigns forever, in coparcenary; all which is respectfully submitted.

ADAM LYNN,
GEO. DRINKER,
JOHN ADAMS,
Commissioners.

A.

Schedule of all the real estate of which Robert Brockett, late of Alexandria, died seized.

5 tenements and lots on Washington street.
1 tenement and lot on an alley between Queen and Prince streets, and Union and Water streets.
1 tenement and lot on Prince and Alfred streets.
½ square of ground on Pendleton, St. Asaph, and Pitt streets.
1 lot on Fayette alley, between Water and Union streets.

½ square of ground and 5 small tenements on Cameron, Columbus and Alfred, and Columbus streets.
¼ of a square of ground and small tenement on Prince and Fayette streets.
¼ of a square of ground on Duke and Henry streets, with a small tenement.

Proceedings before the orphans' court.

DISTRICT OF COLUMBIA, to wit:

Pleas before the honorable the judges of the United States circuit court of the District of Columbia, for the county of Alexandria, the first day of November, 1838.

WILLIAM BROCKETT and others, appellants,
against
ROBERT BROCKETT and others, appellees.

Appeal from the orphans' court, Alexandria county.

Be it remembered, that on the said first day of November, 1838, came the appellants, by William L. Brent, esqr., their attorney, and filed in said court the following transcript of the record of proceedings in the orphans' court:

WILLIAM BROCKETT and others,
vs.
ROBERT BROCKETT and others.

DISTRICT OF COLUMBIA, to wit:

Orphans' court, Alexandria county, November term, 1837.

At a session of the orphans' court for the county of Alexandria, in the District of Columbia, the ninth day of November, 1837.

Present, Chr. Neale, esquire, judge, A. Moore, register.

William Brockett, in his own right, Annabella Brockett, and Elizabeth Brockett, minors, by their counsel and attorney William L. Brent, esqr., having filed their petition, representing to the court that Robert Brockett, sen'r, late of Alexandria, deceased, "left a last will and testament, duly executed as the law directs," that the said last will and testament having been lost or mislaid, they present a faithful and true copy of the same, and praying that said copy may be probated according to law, first notifying the parties interested therein, to wit, Robert Brockett, jun'r, Walter A. Ball, and her husband William Ball, Isaac Wilson, guardian of Thos. K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, infant children of Wilson, deceased, of the same, according to the form of the statute in such cases made and provided. Whereupon, it is ordered by the court, that the register of wills of this court do issue citations, returnable unto court on the first Monday in December next, to the marshal of the District of Columbia directed, commanding him to cite and summon the aforesaid Robert

Brockett, junior, and others as above named, to appear accordingly, either in person or by counsel, to show cause, if any they can, why the said copy of the last will and testament of Robert Brockett, sen'r, should not be proved and recorded as by the said petitioners prayed.

A copy—teste. A. MOORE, *Register of wills.*

Pursuant to the foregoing order of court, the marshal of the district of Columbia, is commanded to cite and summons the parties therein named to appear before the orphans' court of Alexandria county, on Monday, the 4th day of December next, to answer the petition referred to.

A. MOORE,
November 26, 1837. *Register of Wills.*

On which citation, the following returns were made: "Left a copy of the within citation on Isaac Wilson, December 2d, 1837.

ALEX'R HUNTER, *Marshal.*

"Executed by delivering a copy of the within to R. Brockett, jun'r, William Ball and Isaac Wilson.

D. MINOR, *D. M.*"

The petition is as follows, to wit:

To the hon. judge of the orphans' court of the county of Alexandria, in the District of Columbia.

The petition of William Brockett, in his own right, and of Annabella Brockett and Elizabeth Brockett, minors of tender age, by the said William Brockett, their next friend, represents that Robert Brockett, senior, of the county of Alexandria, in the district of Columbia, died some years ago, when your petitioners were minors, and left a last will and testament, duly executed as the law directs, and which last will and testament has never been regularly offered for probate; that the said last will and testament was presented to your honor, but owing to occurrences, unknown to your petitioners, there was no regular action or decision on the same; and that since then, the said last will and testament has been lost or mislaid, or substracted by some person; and that your petitioners cannot find the original, but that they present a faithful and true copy of the same for probate, and they pray your honor to notify all the parties interested therein of the application to probate said last will and testament, and particularly Robert Brockett, junior, Walter A. Ball, and her husband William Ball, Thomas Wilson, John W. Wilson, George W. Wilson and Walter S. Wilson, or the guardians of the four last named persons, who are minors; and also that your honor will fix a certain day for the probate of said last will and testament; and as in duty bound they will ever pray, &c.

BRENT & BRENT,
For petitioners.

And at a session of said court, Monday the 4th day of December, 1837,

Present: the judge and register;

The citation issued at the last term of the court having been returned "executed," and Robert I. Taylor having entered his appearance as counsel and attorney for the respondents, on his motion, time is allowed him, until the first Monday in January next, to answer the bill of the complainants, and cause continued.

And at a session of said court, the fourth day of January, 1838,

Present: the judge and register;

This cause is continued for answers.

And at a session of said court, the eighth day of February, 1838,

Present: the judge and register;

This cause is continued until the first Monday in April next for final hearing, with leave to either party to take testimony before the register of wills, to be read in evidence on the trial of this cause, first giving the usual notice to the adverse party of the time and place of taking the same. And it is ordered, that a copy of the above be served by the marshal of the District of Columbia on the parties or their counsellors or attornies.

On which order are the following returns:

"Served a copy of the within the 17th of February, 1838, on William L. Brent.

ALEXANDER HUNTER, *Marshal.*"

I acknowledge service of the within.

THOS. SEMMES,
Counsel for Ball and wife.

Executed by serving a copy on R. I. Taylor.

E. BURCHELL, *D. M.*
For ALEXANDER HUNTER, *Marshal.*

And at a session of said court, the eighth day of March, 1838,

Present: the judge and register;

On motion, Robert Brockett is assigned guardian ad litem of George W. Wilson and Walter S. Wilson, to defend them in this suit.

And at a session of said court, the second day of April, 1838,

Present: the judge and register;

By consent of parties, this cause is continued until the 5th inst., April.

And at a session of said court, the fifth day of April, 1838,

Present: the judge and register;

By consent of parties, this cause is continued until the 11th of April, instant.

And at a session of said court, the eleventh day of April, 1838,

Present: the judge and register;

Answers filed, and general replication and issue, and cause continued until the first day of May, 1838, by consent.

On motion of William L. Brent, of counsel for William Brockett and others, a commission is awarded, directed to any justice of the peace for the county of Washington, D. C., to take the deposition of James Dixon and others, to be read in evidence in this cause, first giving the adverse party notice of the time and place of taking the same, and cause further continued for final hearing 'til Tuesday, the first day of May, 1838.

And at a session of the said court, the first day of May, 1838,

Present: the judge and register;

The annexed decree is entered as the judgment of the court. Vide paper A.

Costs of register of wills - - - -	$22 50
Costs of D. A. Hall, justice of peace, - -	10 00
	$32 50

The answer of Robert Brockett, Thomas K. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, the two last infants under the age of twenty-one years, by the said Robert Brockett, assigned their guardian, to defend this suit, to the petition filed by William Brockett and others against the said Robert Brockett, (therein styled Robert Brockett, jun'r,) these respondents and others, before the orphans' court of the county of Alexandria.

These respondents assuming to themselves all benefit of exception to the petition of the said William Brockett and others, in answer then do say, that they deny that the said Robert Brockett, the elder, ever did make and execute any last will and testament. They admit that at a session of this court, held on the 19th day of January, 1830, a paper in the handwriting of the said R. Brockett, the elder, was produced as the last will and testament of the said Robert Brockett, the elder, by one Elizabeth Brockett, and offered for probate; but they deny that the said paper was the will of the said Robert Brockett, the elder, and aver that it was rejected as such by this court, and probate thereof refused; on which decision of the court, these respondents rely in bar of the present application of the petitioners. These respondents do not know what has become of the said paper, and require full proof thereof.

R. I. TAYLOR.

The within answer was sworn to in due form of law by Robert Brockett, the 2d day of April, 1838.

A. MOORE,
Register of wills.

To the honorable the judge of the orphans' court of Alexandria county.

The answer of William Ball, who intermarried with Walter Ann Brockett, reserving all exceptions to the errors and insufficiencies of a bill, filed in your honorable court by Elizabeth Brockett and

others, respectfully denies the truth of every allegation in said bill, and calls for strict proof on the part of the complainants. These respondents deny that Robert Brockett, deceased, ever made a will of any kind; and that if the paper produced by the complainants was truly written by the said Brockett, still your respondents contend that the same is not in law a valid will of either real or personal property. For the correctness of this latter position, your honor is respectfully referred to the paper exhibited, and taken in connexion therewith, to a decision of the general court of Virginia pronounced at November term, 1818, in the case of Selden and others vs. Coalter and others, reported in the second volume of Brockenborough's "Virginia cases," appendix, page 553, which decision, your respondents contend, will completely conclude any claim of the complainants to consider said paper a will. See Tate's Digest, 518, for the Virginia Statute of Wills.

Your respondents pray that your honor will refuse to admit the said paper to probate as the last will and testament of Robert Brockett, deceased, and to be hence dismissed with their costs in this behalf wrongfully sustained.

TH. SEMMES,
For Wm. Ball and wife.

DISTRICT OF COLUMBIA, *sct:*

Orphans' court, Alexandria county, April term, 1838.

To any justice of the peace for the county of Washington, in the district aforesaid.

You are hereby commissioned to take the depositions of James Dixon and others, to be read in evidence in a certain matter of controversy in our said court depending, wherein William Brockett and others are complainants, and Robert Brockett and others are defendants, which depositions you are to return *under seal*, directed to the "Register of Wills, of Alexandria county, District of Columbia."

Witness Chr. Neale, esq., judge of said court, this 11th day of April, 1838.

Teste:
A. MOORE,
Register of wills.

In the orphans' court of Alexandria county, D. C.

WILLIAM BROCKETT and others,
vs.
ROBERT BROCKETT and others.

Depositions of witnesses, produced on behalf of the complainants.

Ann Maria Ritchie, a witness of lawful age, being duly sworn, doth depose and say in reply to interrogatories propounded, as follows, to wit:

1st. Did you know Robert Brockett, sen., in his life-time?

Answer. Yes, I did.

2d. Did you ever hear said Robert Brockett say that he had made his will; and, if so, when and where? State all you know relative to it.

Answer. Yes. I heard him say in his last sickness, he had made his will. He told his son Robert Brockett, jun., to go for Robert I. Taylor, esq., whom he wanted to witness his will. The son asked him, if he could not answer as well; he replied, no; that he wanted Mr. Taylor to witness his will. He did not go for Mr. Taylor that she knows of; at least Mr. Taylor did not come. In this conversation he said, he had written a will, which he wanted the said Taylor to witness, the next day Mr. Taylor not coming, he said that what he had done must do, referring to his will.

The deponent further saith, that when the said Brockett was taken sick, she was living with Mr. Joseph B. Ladd, and was sent for to attend him; she went and remained with him to the time of his death.

Question 3d. Did his wife Elizabeth Brockett and her three children live with the said Robert in the same house at the time of his death?

Answer. Yes, they did, and he was much attached to them.

Question 4th. Are you interested, directly or indirectly, in the establishment of the will of said Robert Brockett?

Answer. I am not interested in it at all, either directly or indirectly, I am the half-sister of the complainants by another father.

Questions to Anna Maria Ritchie, on behalf of defendants.

In answer to the defendant's cross interrogatories, the *defendant* saith:

1st. What was your maiden-name before you married J. H. Ritchie, your present husband; and are you the daughter of Elizabeth Brockett, mother of complainants?

To the first. My maiden-name was Anna Maria Moulder, and I am the daughter of Elizabeth Brockett, mentioned in this interrogatory.

2d. When Robert Brockett, sen., requested his son to send for Robert I. Taylor, did he say whether he wanted him to witness his will, or to write his will, and are you positive on this point? And who was present when he said so?

To the second. Yes; I am positive; he said he wished Mr. Taylor to witness the will; no one was in the room at the time that I recollect of.

3d. Did he say that he had given Robert Brockett, jun., nothing by his will; and, if so, what reason did he assign for leaving him nothing?

To the third. I have heard him say repeatedly, that he would give him nothing; that he had got enough out of him; that is the

way he used to talk. I never heard him say that he had given him nothing by that will, nor what he had given any of them by that will.

4th. When did you last hear Robert Brockett, the elder, say that he would give Robert Brockett, jun., nothing by his will?

To the fourth. On his last sickness.

5th. Where did Robert Brockett, the elder, reside at the time of his death?

To the fifth. He died near the steam mill, in his own house.

6th. Did you ever hear him say that he had given the bulk of his estate to his children by Elizabeth Brockett, by his will?

To the 6th. Yes.

7th. Did you ever, on any former occasion, give your affidavit or deposition in this case?

To the 7th. Yes; I did day before yesterday make a deposition before Mr. Hall, at the request of Mr. Brent.

8th. In that deposition, did you say that the testator said he had given his son Robert Brockett nothing by his will, and that he had given the bulk of his estate to his children by Elizabeth Brockett?

To the eighth. I did not state it to the best of my recollection.

9th. Did he say any thing as to what were the contents of the will?

To the ninth. He did not.

10th. Who was present when Robert Brockett, the elder, as you have stated in your answer to the 2d question of complainants, said that what he had done must do, referring to his will?

To the tenth. No person that I can recollect of.

11th. How long did you remain in the house of Robert Brockett, after his decease?

To the 11th. I do not know how many days rightly. I did not return to Mr. Ladd's, but remained in the house till I was married.

12th. How long did Robert Brockett's last illness continue?

To the twelfth. I do not know rightly how long.

13th. Did you ever see any will left by Robert Brockett, sen.?

To the thirteenth. I never did.

her
ANN MARIA ✕ RITCHIE.
mark.

Witness—D. A. HALL.

Subscribed and sworn to before me,

D. A. HALL. *J. P.*

Depositions of James Dixon.

Questions to witness on the part of complainants:

1st. Did you know Robert Brockett intimately in his life-time, and were you acquainted with his handwriting?

Answer. I was, and knew his handwriting, having frequently seen him write.

2d. Did you or not ever see the original paper of which exhibit A now shown you is said to be a true copy, being the same exhibit filed with the deposition of James Carson; and was said original paper wholly written in the handwriting of the said Robert Brockett, sen'r, deceased; and is said exhibit A, to the best of your recollection, a true copy of the same?

Answer Yes; I did see an original paper, wholly written in the handwriting of the said Brockett, of which the said exhibit A is, to the best of my recollection, a copy; but I cannot say that it is a verbatim copy, though it is substantially a copy of the original.

3d. question. When and where did you first see the said original paper, of which the said exhibit A is said to be a copy?

Answer. As to the date I cannot be particular, but it was a few days after Mr. Brockett's death, and at Mr. Moore's office, that I first saw it. The day after the old man's death Robert Brockett, jun'r, Dr. James Carson, and myself, collected all the papers and put them in a trunk, which was placed, with its contents, in the Mechanic's bank; after the funeral the trunk was brought to the orphan's court, and the papers were examined; it was there that I first saw the paper; it was found in a book in which the old man kept his accounts; it was written on a half sheet, as I think, but not more certainly than a whole sheet, but whether it was folded I do not know.

4th question. Did or not the said deceased Brockett ever inform you that he was about making his will; and how long before his death did you hear him speak of it?

Answer. Yes; in the winter previous to his death, some time between the month of December, 1828, and his death, he told me that he intended to make his will and an arrangement of his affairs.

5th question. Did you or did you not, during that time, see him engaged in writing, as if he was writing something private to himself; if so, what do you suppose it was?

Answer. Yes; I saw him frequently engaged in writing on a piece of paper very much like, or of the same kind of paper, apparently, with that referred to as seen in the orphan's court; and I supposed to myself that that was the business that he was engaged in, from his having spoke to me of making his will.

6th question. What were the habits of Mr. Brockett as to the care of his papers; was he or was he not particular in the preservation of them?

Answer. I should say that he was rather loose about them, and careless in leaving his papers about.

7th interrogatory. In what house did Mr. Brockett die, to whom did it belong, and how long had he lived there?

Answer. I believe he owned the house he died in; he lived there in it in August, 1827, but I do not know how long he had been there, and he died in March, 1829. It was the house near the steam mill.

8th. Were the complainants with him at the time of his death, and was he or not attached to them?

Answer. They were living with him at the time, and he seemed to be as much attached to them as any other parent is to his children.

9th interrogatory. Were you acquainted with Mr. Brockett's property in Alexandria? Please state whether or not the said property was known, or divided by lines or lots, enclosed as other lots are.

Answer. Yes, I was, and I believe it was enclosed property.

10th interrogatory. Do you know what became of the papers referred to in the trunk?

Answer. Yes; they were delivered to Robert Brockett, jun'r, the administrator, but I cannot say by whom they were delivered; I have since seen them in the said Brockett's house.

11th interrogatory. What papers were in the said trunk besides the one above referred to?

Answer. There were a great many letters, and other papers, and I have the impression that among them there was a paper containing a plat of a half square of ground near Christ's church, giving the elevation of the houses he intended to build on said ground, and the division of the lots he intended to put the houses on.

12th. Who attended Mr. Brockett as nurse in his last sickness?

Answer. Robert Brockett, jr., and myself, and Anna Maria, now Mrs. Ritchie, who attended him.

Questions to Dixon, by defendants.

1st. Have you ever seen exhibit A before to-day; and, if so, when?

Answer. Never before to-day.

2d. When did you last see the original paper, of which exhibit A is said to be a copy; were the original and the copy ever compared by you or in your presence?

Answer to the 2d. Some few days after the death of the said Brockett; they were never compared by me or in my presence, to my recollection.

3d. Did Alexander Moore, register of wills, engage in the examination of the papers in the trunk at his office; and by whom was the original of exhibit A found?

Answer to 3d. Certainly he did, and the said original paper was found by said Moore.

4th. In what part of the house was the book containing the will found; was it on a shelf, open to the access of all the family and servants?

Answer to 4th. I think it was in the desk, but I am not certain; sometimes he left it in the desk, and sometimes on it; but the lock was not in proper order for fastening the desk, and it was open to the access of the family; but there was an apartment in his sideboard where he used to keep some of his papers, and where he kept his money; this had a good lock upon it.

5th. Where had Ann Maria Ritchie lived immediately before she came to attend Robert Brockett, the elder, in his last sickness?

Answer to 5th. She lived with Miss Ann Padgett.

6th. Was Robert Brockett, the elder, a man of good understanding?

Answer to 6. Certainly, rather beyond mediocrity.

7th. Were you residing in the house, and with the family of Robert Brockett, the elder, during his last illness?

Answer to the 7th. I was, and had been the winter previous.

Question by complainants' counsel.

In your answer to the 5th cross interrogatory, you state that Anna Maria resided with Ann Padgett at the time she came to nurse the deceased in his last illness; are you positive of that fact?

Answer. No, I am by no means positive, but I know she had been living previously.

JAMES DIXON.

Subscribed and sworn to before me,

D. A. HALL,
Justice of the peace.

Be it remembered that, on this 13th day of April, 1838, at the city of Washington, I, the undersigned D. A. Hall, a justice of the peace in and for the county of Washington, in the District of Columbia, in pursuance of the authority given in the annexed precept from the orphans' court of Alexandria county in said district, did cause Anna Maria Ritchie and James Dixon, witnesses summoned to testify on behalf of William Brockett, and others, in the cause named in the said precept, to come before me, and did take their several depositions to be used in the said cause, and did reduce the same to writing, and that the said witnesses subscribed and made oath to the same before me in due form of law; which said depositions are hereto annexed and sealed up by me. And counsel appeared for the said parties, to wit: William L. Brent, esq'r, for the complainants, and Robert I. Taylor and Thomas Semmes, esq'rs, for the defendants, and William and Robert Brockett, two of the persons interested in the said cause, were also present; all of which is respectfully submitted by the undersigned.

D. A. HALL,
Justice of the peace and commissioner.

Commissioner's fee, $10.

WILLIAM BROCKETT and others,
against
ROBERT BROCKETT and others.

Deposition of James Carson, who, being first duly sworn, answers and says, as follows:

What do you know relative to the paper said to be the last will and testament of Robert Brockett, deceased? State all you know.

This deponent, and he thinks a person named Dixon, at the request of Robert Brockett, junior, examined the papers of the deceased, and among his valuable papers we found the paper said to be his last will and testament, and, as deponent thinks, in the desk of the deceased. This deponent examined the paper and read it, and is positive that it was wholly written in the handwriting of the deceased, with which deponent was well acquainted; and that he has read exhibit A, filed with this deposition, and shewn to him by the register of wills for the county of Alexandria, in the District of Columbia, as a copy of said original last will and testament, which is said to be lost or mislaid and cannot be found, and that, to the best of deponent's recollection, it is a true copy of the same; and this deponent is positive contains the true substance of said last will and testament, and, to the best of deponent's recollection, is a verbatim copy of the same. That said original last will and testament, as so called, was put into a trunk with the other papers of the said deceased, and deposited for safe keeping in the Mechanics' Bank of Alexandria, immediately after the decease of the said Robert Brockett, where it remained until Robert Brockett, jun'r, was appointed administrator of said deceased's estate, when said trunk was delivered to him, or to the orphans' court.

This deponent further states, that he appeared before the orphans' court of said county of Alexandria, when he saw said original paper, said to be the last will and testament of said deceased, and proved it to have been wholly written in the handwriting of said deceased; and that he has not seen said original paper since, to the best of his recollection.

Questions by defendants' counsel.

1st. In whose house were the papers of the deceased, when the paper called a will was found?

Answer. In the house where Robert Brockett, the elder, died, near the bake-house then occupied by R. Jamieson.

2d. Are you positive that the paper called a will was found in the desk of the deceased, or was it not found among a number of account books on a shelf, open to the access of all the family and servants?

Answer. He is not positive it was found in the desk—he cannot say positively where it was found.

3d. Was the desk of which you speak locked?

Answer. He cannot think it was.

4th. What valuable papers were in the desk?

Answer. There were some accounts and letters—he remembers no notes or bonds, or any valuable papers.

5th. When did you last see the paper called a will, and where?

Answer. He thinks in the orphan's court, where it was offered for probate.

6th. Are you able, at this distance of time, to say that the paper

A, now produced, is a true copy of the original paper called a will?

Answer. I think it is.

7th. Can you state from recollection, the manner in which the testator disposed of his property by the original paper referred to? If so, be pleased to state it.

Answer. He cannot.

8th. Was the original paper, before referred to, found before the papers were placed in bank?

Answer. It was.

9th. Was Dixon present when it was found?

Answer. He thinks he was.

10th. After you had found the paper referred to, did you consider it as a will, and treat it as such?

Answer. He did not, and told some of the relatives there was no will.

Examination in chief resumed by complainants' counsel.

1st. Was not the desk in which you think the paper, said to be his will, [was] found, standing in the room in which said deceased Brockett usually slept?

Answer. It was.

2d. Are you positive the desk was not locked?

Answer. I am not.

3d. How long after the death of the deceased was it when you found the paper, said to be his last will and testament?

Answer. I think it was in a day or two.

4th. Did you find papers you call valuable papers, in other places than the desk?

Answer. We found no very valuable papers at all—he did not appear to have any, except such as accounts, letters on business, &c., which we found as well on shelves and in books, as in the desk.

5th. Did the deceased appear to have any system or care in putting away his papers?

Answer. He did not. His papers, such as found, were in different places, and in no sort of order or arrangement: for instance, a letter upon business, of three or four years standing, would be found carelessly thrown by, and perhaps one of a few days date along side of it.

Question by defendants' counsel.

11th. Do you know when the paper called a will was written; and where Robert Brockett, the elder, then resided; and how long he was confined in his last illness?

Answer. He does not know when the said paper was written, nor where the said Robert Brockett then resided. His last illness continued about three weeks, and he died in the latter part of March, 1829.

(Signed) JAMES CARSON.

Continuation of James Carson's examination.

Questions by defendants' counsel.

12th. Was the paper called a will, found open or folded up amongst the papers of Robert Brockett, the elder; and what was the size and appearance of the paper on which it was written?

Answer. The paper alluded to was not folded to the best of his recollection, and the writing occupied about two-thirds of a half sheet of foolscap paper.

13th. Were there any books or papers of the said Robert Brockett found on an open shelf in the room, accessible to the family and servants, and were they letters, accounts, and papers of the same description as you have before spoken of?

Answer. To the best of his recollection, he answers in the affirmative.

14th. Had Robert Brockett, the elder, occupied several houses of his own in Alexandria during the years preceeding his death, and was the house in which he died his property?

I answer in the affirmative.

15th. Was the paper referred to as a will, found in the house in which he died?

I answer in the affirmative.

16th. Have you ever compared the paper now exhibited, and referred to as marked A, with the original, of which it is said to be a copy, or was such comparison ever made in your presence and hearing? If yea, say when and where.

I answer in the negative.

JAMES CARSON.

Paper A, referred to in James Carson's deposition.

The last W— and T— of R. B., sr., of Alexandria, viz:

Item 1st. I give and *bequeathe* to my grand daughter, Walter Ann Brockett, the house I live in with all its appurtenances.

2d. I give and *bequeathe* to my eldest son, Robert Brockett, my youngest son, William Brockett, and my two daughters, Annabella and Elizabeth Brockett, and Elizabeth their mother, all my other real and *parsonal* estate, *except* such as I shall hereafter reserve, and in the following manner, viz: all the children being of full age, and one year after my death, three persons shall be chosen according to law; one of whom I now name, Francis Peyton, if then alive; two will then be left to the choice of the parties or the court; and, in order to divide the property in the best manner, they are to proceed thus: not less than two building *lotes*, when *practable*, are to be put together; drawings of the property will be thereto attached; they will be numbered, and should any be mislaid, they must be found, it being my last will that all the lines shall stand as I have laid them out; should there arrise any *diferrence* about the value of the *lotes*, each *commissioner* shall make his

own value, *and a third* part, when added together, shall be the value thereof; and when all the *reale* estate is divided into five *equal parts and numbered*, the parties shall then draw or cast *lotes* to determine which number shall be *their sheare*, but shall first draw to determine who shall draw first, second, third, and *forth*, the fifth number belongs to the fifth person without drawing. It is also my will, that at the death of the widow, her part shall be *equeally* divided between Robert Brockett, my grand *sone*, and my son Will'm if then alive; if not, to the nearest male heir of the name of Brockett; and in all cases of the female parties above described, and dying without legal heirs of their own bodies, their part shall also be divided amongst the nearest male heirs of the name of Brockett."

Taken and sworn to before me, and in presence of the counsel for both parties.

A. MOORE, *Register of Wills.*

WM. BROCKETT and others
vs.
ROBT. RROCKETT and others

Deposition of Alexander Moore, register of wills, Alexandria county.

Questions by complainants' counsel.

1st. Have you searched for a paper said to be the last will and testament of Robert Brockett, sen'r, deceased, wholly written by him, in your office of register of wills, of the county of Alexandria, in the District of Columbia, and elsewhere, and have you found the same?

Answer. I have diligently searched in my office and cannot find the same. I have also searched among the papers of the dec'd Thomas W. Hewett, esq'r, and also among the records of the circuit court of the District of Columbia, in the county of Alexandria, and I cannot find the same, and that the same is lost or mislaid, and cannot be found.

2d. Have you any knowledge of such paper? Please to state all you do know relative thereto.

Answer. I have a perfect knowledge of the paper called the will of Robert Brockett, a copy of which is hereto annexed marked A, and filed with James Carson's deposition, the original of which was wholly in the handwriting of the said Brockett, and was so proved to be on the 19th day of January, 1830, before the judge of the orphans' court of Alexandria county, by James Carson and James Douglass, and being well acquainted with his handwriting, having seen him frequently write, I am positive as to the handwriting, and that the same was wholly in the handwriting of said Robert Rrockett, sen'r.

3d. Is or is not the exhibit A, filed with the deposition of James Carson, a true copy made verbatim of said original paper so wholly written by said deceased Robert Brockett in his life; and did you

or did you not carefully examine and compare the said copy with said original?

To the 3d I answer in the affirmative; said copy being made from the original.

4th. How can you account for the loss of said original paper, and why was the search made by you among the papers of deceased Thomas W. Hewett, esq'r, and among the records of the aforesaid circuit court?

Answer. I can not account for the loss of said original paper, unless like many other original papers, which have been lost by their being removed when the office of the register of wills has taken fire on two occasions. T. W. Hewett was counsel for Elizabeth Brockett, and my impression is that he might have taken the same from my office, to be used in a suit instituted by the said Elizabeth in the court of chancery, of Alexandria county, relative to the estate of said R. Brockett, sen'r. I examined the papers in the said suit, and also the private papers of T. W. Hewett, who was counsel for E. Brockett, and did so at the request of the petitioners, but have not found the same.

5th. Did either of the petitioners, who have now offered to probate said last will and testament, or the said Elizabeth Brockett, the mother, take the same from your office to your knowledge or belief?

Answer. I believe they did not, and I have no knowledge that they did.

By defendant's counsel.

1st. On the offer to prove the said paper as a will, was any judgment rendered by the court—was it reduced to writing? and if so, please to annex a copy.

Answer. The proceedings had on said paper were reduced to writing by me, on a scrap of paper in the presence of the judge, the witnesses, Thomas W. Hewett, counsel for Elizabeth Brockett, and R. I. Taylor, counsel for Robert Brockett, jun'r, and are in the following words, to wit: "At a session of the orphans' court for "the county of Alexandria, in the District of Columbia, the 19th "day of January, 1830, this instrument of writing, purporting to be "the last will and testament of Robert Brockett, dec'd, was this day "offered for probate by Thomas W. Hewett, of counsel for Eliza- "beth Brockett, and proved by the oaths of James Carson and "James Douglass, to be wholly written by the deceased, and so "admitted by his administrator; but the court refused to admit the "same to record; whereupon the said counsel appeals to the circuit "court of the District of Columbia, and county of Alexandria," but were not entered on the minutes or records of the court.

2d. What was the size and appearance of the paper on which the original of exhibit A appeared to have been written? Had it any marks or creases showing that it had been folded up?

Answer. From my recollection it was written on a half sheet of paper called foolscap. I do not recollect whether it was folded or not.

3d. Was Dixon and James Carson examined in relation to the place and manner in which the said paper was found; and what statement did they make?

Answer. I have no recollection.

4th. Had Robert Brockett the elder occupied several different houses of his own at different periods, during his residence in Alexandria; and was the house in which he died his own?

I answer in the affirmative.

5th. By the judge of the court.

When did R. Brockett, sen'r die? and when was the supposed testamentary paper written?

Answer. R. Brockett, sen'r, died in March, 1829. I have no idea when said paper was written, or how long he was confined in his last illness.

A. MOORE.

Sworn to before the judge of the orphans' court.

Mr. ROBERT BROCKETT:

You are notified to produce before the judge of the orphans' court of the county of Alexandria, District of Columbia, in the case of the petition of William Brockett and others, for the probate of the last will and testament of Robert Brockett, deceased, on whose estate you administered, the original instrument of writing admitted by you in your answer in this case to have been wholly written by said decedent in his life time, and which said instrument of writing is referred to in the depositions of Alexander Moore, James Carson, and James Dixon in this case, and claims by the aforesaid petition to be the last will and testament of said deceased, in the present case of application for probate as aforesaid, as well as the *plats, plans* or descriptions of the lots of said decedent in the town of Alexandria, where he died, which were among the papers of said deceased, all of which the petitioners allege to be in your possession, or to have been taken by you.

BRENT & BRENT,
For petitioners Wm. Brockett & others.

May 1st, 1838.

A copy of this notice was delivered to me as the solicitor for Robert Brockett, to have the same effect as if served on him.

R. I. TAYLOR,
May 1st, 1838. *Solicitor for R. B.*

Wm. Brockett, one of the petitioners, and the agent for them all, makes oath that he has not in his possession, or ever had, the original paper named in this case as the last will and testament of his deceased father Robert Brockett, sen'r, deceased, nor does he know

where it is; nor is it among the papers, or in the possession, or ever was, of his mother Elizabeth Brockett, or his sisters Annabella and Elizabeth; and that he has used due diligence and searched everywhere he could think of, for said paper, and cannot find it.

Sworn to in open court, May 1st, 1838.

A. MOORE,
Regt'r of wills.

Partition of real estate of R. Brockett, as made by commissioners of the circuit court, to be made a part of the record, admitted that during the last illness of Robert Brockett, sen'r, and to the time of his death, he and Robert I. Taylor, mentioned in the depositions of Anna Maria Ritchie, resided in opposite ends of the town of Alexandria, the former in the northeast and the latter in the southwest end of the town, distance six squares from east to west, and five from north to south.

May 1st, 1838.

WM. BRENT,
For petitioners.
R. I. TAYLOR,
For R. B.

It is agreed between the parties to this case, that one of the petitioners, to wit, William Brockett, is just of lawful age, and that his two sisters, to wit, Elizabeth and Annabella Brockett are minors.

May 1st, 1838.

WILLIAM BROCKETT and others,
against
ROBERT BROCKETT and others.

In the orphans' court of Alexandria county, 1st May, 1838.

Robert Brockett, senior, departed this life in the spring of 1829; and after his death a certain writing was found, among his loose papers [a true copy of which is filed in this cause, and marked A, the original being proved to have been mislaid or lost,] and the same averred by the petitioners in their petition to be a true copy of the paper, purporting to be the last will and testament of said Brockett, senior, and praying that the same may be proved and recorded in this court, as the said last will and testament of the aforesaid Robert Brockett, senior, in order that the devises and bequets therein contained may take effect, both as regards the real and personal estate of which the said Brockett died seized and possessed. On the part of the petitioners parol evidence was offered, not only to prove that it was the last will and testament of Robert Brockett, sen'r, but that it was *wholly* in his handwriting, and that being *wholly* in his handwriting, that, although the name of Robert Brockett, sen'r, is neither signed or subscribed thereto, nor written in the body thereof, but simply the initial letters, R. B. sen'r, in the beginning, it was nevertheless, with the aid of parol evidence, a sufficient compliance with the requirements of the statute of wills

of Virginia, in such case made and provided, to entitle it to probate as a last will and testament; and, in support thereof, several authorities and adjudged cases were cited on the part of the counsel for the petitioners. On the other hand, the respondents, by their counsel, contended that the execution of the paper, in the manner above stated, did not sufficiently comply with the law, so as to entitle it to probate as a last will and testament, to pass either real or personal estate, admitting, however, at the same time, that it was *wholly* in the handwriting of the said Robert Brockett, sen'r; and, in their answers, they also rely on the action said to have been had upon the original paper writing, in this court, on the 19th day of January, 1830, as decisive against its validity as a last will and testament. Several depositions were taken by the petitioners; all of which prove that the original paper writing, of which the one marked A is a true copy, was *wholly* in the handwriting of the late Robert Brockett, senior; that his death was not sudden; that he lived at different periods of time, in different houses, and finally died in the one he owned, situate a little west of Union street, in the town of Alexandria; but when, and where the will was written, is not positively ascertained. Mr. Dixon, one of the witnesses examined, thinks it was written in his last illness, or immediately previous thereto, but of this he does not speak positively; the other witnesses are ignorant as to this fact. The uncertainty, therefore, if no other objection interposed, as to what house he lived in when the supposed will was written, is not without its full influence as regards the devise to his grand daughter, Walter Ann Brockett; that part of the evidence which states that the testator desired that Mr. Taylor might be sent for, if it proves any thing, clearly shows his mind was unsettled as regards the will in question, and that he wished his counsel and advice, in order that its imperfections, if any existed, might be properly corrected, or a proper will drawn, the professional standing of the counsel in question, negativing the idea or supposition that the testator wished him sent for merely to *witness* the execution of his will, which could have been equally well done by any and every bystander, or by his more immediate neighbor. The following authorities were cited and relied on by the petitioner's counsel:

3 Vesey, 148, Abbott and Massey, 4th Do. 680, Price & Page; 8th American Common Law, 396; 2 Roberts on Wills, 20 to 22; 1st Do. 154; 2d H. & M., 467 to 525. The decisions in all these cases turned upon testaments of personal property only, and therefore they do not apply to cases affecting real estate, except the last mentioned, which, as regards real estate, would, upon principle, seem to be opposed to the paper writing here set up, as being a valid and sufficient last will and testament to pass real estate. Roberts on frauds, 453. If this case rested solely on ties of blood and parental affection, it is admitted that sufficient evidence has been adduced to sustain it; but the law having pointed out a par-

ticular mode by which such ties and affections can be legally carried into effect, has such mode been pursued in the present case; and if not, can any thing short suffice? And it may be worthy of remark that the petition no where alleges fraud or mistake, but relies solely upon the sufficiency of the paper exhibited, with the aid of parol evidence, as a valid last will and testament. In 2d Roberts on Wills, 22, the Lord Chancellor, in the case of Castledon & Turner, among other things, remarked, "where there is no devise named, this is an absolute omission, and cannot be supplied by parol evidence; and, by parity of reasoning, where a testator's name is entirely omitted, as in this case, how can it be supplied by parol evidence so as to affect real estate?

1st Roberts on Wills, 99, 100. The point here discussed by the court related to cases where the testator could not write his name; but no such difficulty occurred in this case, and hence it does not apply.

1st Tucker's Com., 288, treats of the different provisions contained in the Virginia Statute of Wills, but makes no allusion to a case like the present.

4th H. I. Johnson, 174—Judge Buckannan's opinion. These reports are not to be had here.

1st Powell on Devises, 486, notes. There is no edition here of this work *with notes;* but, upon looking into the page referred to, it is quite clear that parol evidence, in a case like this, is inadmissible, in order to establish a will of *real estate.*

2d Leigh, 256. The only analogy perceived between the case here reported, and the one under consideration, is, as to the mere *informality* with which both of the testamentary papers were drawn; but the material and important difference between that case and the present, is this: Sharp's name is written at large, *subscribed* and *sealed*, while the initial letters R. B. sen'r, and not Robert Brockett, sen'r, are all that appear on the face of the paper writing marked A, and set up as the last will and testament of Robert Brockett, sen'r.

2d Virginia cases, appendix 554. This case, and this only, was referred to, and relied on by one of the defendants in his answer, as well as by the petitioner's counsel. In the case here reported, the testamentary paper was offered for probate, as a valid will, to revoke in part a *prior will*, *perfect* in all respects, and which had been previously proved and recorded; but a majority of the court, for reasons separately assigned, rejected it. Had there been no previously established will, possibly a different decision might have been made, but in this case there is no other testamentary paper, either probated or offered for probate; the one now offered being the only one, so far as it is known and verily believed by all the parties.

7th Peters, 431. Here the court decided, that the mere omission of the christian name was *not error*, but the omission of the chris-

tian name only, is one thing, while that of both christian and surname is quite a different matter, and while "J. J. Sigg" was deemed a sufficient designation, non sequitur, that J. J. S. would have been.

The above, are all the authorities to which reference was made by the counsel on behalf of the petitioners, and with every disposition to be concise in the notice of them here taken, it is to be regretted that it is unavoidably so prolix.

The admissibility of parol evidence, to establish a will affecting *real estate* is admitted in two cases only, 1st, to ascertain the person, where there are two of the same name; or, 2d, where there has been a mistake in a christian or surname; but these admissions are where the will is in all other respects *perfect;* but in the present case, the evidence is not offered merely to explain ambiguous words used by the testator, but to add to mere initial letters by parol evidence, that which the testator himself omitted or failed to make, and who alone was competent to make it, although it is proved that his last illness continued for about three weeks, thereby affording him abundant time to have supplied any and every omission, had he been so disposed.

Without stopping to look into authorities, beyond those to which reference was made by the petitioner's counsel, it is deemed quite sufficient to remark, that the Virginia statute of wills is a literal transcript from the statute of 29 Charles 2, with the exception that it dispenses with the attestation of witnesses, where the will is *wholly* in the handwriting of the testator, and signed or subscribed by him, or by some person for him, and at his request. But can such signing or subscribing be so dispensed with in a will, so as to pass real estate? Is it not a statutory mode of conveyance, and if so, must not *all* the requirements of the law be fully and completely executed? And are they in the present case? Even admitting that the initial letters R. B. sen'r, were intended by the testator to mean Robert Brockett, sen'r, or to be a substitute therefor, still such intent does not satisfy the statute and can be of no avail unless *actually* executed in writing by the testator or by some person for him, and at his request in his life time. The will upon its face must be *complete* in *all* respects, as regards the requirements of the law, to give it validity as a will affecting *real estate;* nothing short it is conceived will suffice. No doubt is entertained, that had the name of Robert Brockett, sen'r, been written either at the *top* or bottom of the supposed testamentary paper, and the same *wholly* in the handwriting of said Robert Brockett, sen'r, that upon the testimony of two competent witnesses, of its being *wholly* in his handwriting, that it would have been a good and valid will to pass real estate, and as such, would be admitted to record. Having thus attempted to assign the reasons for refusing to probate the paper writing marked A, as a will affecting real estate, the next inquiry is, as to its validity as a testamentary paper, to affect personal property.

Great latitude is given to testaments of *personal estate;* they rest upon civil or common law principles, neither of which prescribes a particular form, but simply that they shall amount to a "legal declaration of the party's intentions, which he wishes to be performed after his death," and is not the paper writing exhibited, marked A, such a "legal declaration of intention?" The court so considers it, founding its opinion on the case of Cogbill and Cogbill, as reported in 2 H. and M. 467, there being no evidence before the court of a posterior will having been made and executed, and which alone could revoke the one now set up, as a good and sufficient will of personal estate. As regards the proceedings in this court said to have taken place on the 19th January, 1830, and to which reference is made, it is not perceived how it can *conclude* the petitioners in the present case, inasmuch as the records of the court are silent upon the subject.

The following decree, therefore, is entered as the judgment of the court.

This cause coming on this day for final hearing, upon the petition, answers, replication, and depositions, on consideration whereof, the court doth refuse to allow parol statements made on oath to be read as evidence, in order to establish the paper writing marked A, as a will affecting *real estate*, the same being inchoate only, and the evidence offered by the petitioners being deemed inadmissible, for the reasons above stated; but the court admits the evidence to establish it as a valid testamentary paper to pass personal estate, and as such it is ordered to be recorded. From which decision, the petitioners by their counsel and attorney, William L. Brent, esquire, pray an appeal to the circuit court of the United States, for the county of Alexandria, which is accordingly granted, upon their executing bond with approved security, as the law directs.

DISTRICT OF COLUMBIA, *sct:*

I, Alexander Moore, register of wills for Alexandria county, in the District of Columbia, do hereby certify that the foregoing is a true copy of the record of the proceedings in the orphans' court of said county, in the case of William Brockett and others against Robert Brockett and others, containing fifty pages, including the decree of the court.

[L. S.] In testimony whereof, I have hereto set my hand and affixed my seal of office, this 8th day of May, 1838.

A. MOORE, *Register of wills.*

Upon consideration thereof, it is decreed, ordered, and adjudged, that the judgment of the orphans' court be affirmed with costs.

Record of the chancery suit of Elizabeth Brockett against Robert Brockett and others, referred to in the foregoing proceedings.

Proceedings in the chancery suit, Elizabeth Brockett against Robert Brockett and others.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

Pleas before the honorable judges of the United States circuit court, of the District of Columbia, for the county of Alexandria, ——— day of September, 1833.

ELIZABETH BROCKETT, complainant,
against
ROBERT BROCKETT, Walter Ann Brockett, daughter of Walter Brockett, deceased, Walter Wilson, Thomas Wilson, John Wilson, and G. W. Wilson, children of Margaret Wilson, deceased, formerly Brockett, and William Brockett, Annabella Brockett, and Elizabeth Brockett, children of Robert Brockett, deceased, and of the complainant, defendants. } In chancery.

Be it remembered that heretofore, to wit, at the rules held in the clerk's office of the said court for the month of February, 1830, came the complainant, by Thomas W. Hewitt, esq., her solicitor, and filed there a certain bill against the said defendants, which bill is as follows:

Bill.

To the honorable the judges of the circuit court of the District of Columbia, sitting in chancery at Alexandria.

Humbly complaining your oratrix, Elizabeth Brockett, showeth to your honors, that she is the widow of Robert Brockett, sen., late of the town of Alexandria, who departed this life on or about the —— day of ———, in the year ——, seized of a very considerable real estate, consisting of a number of houses, vacant and unimproved lots and ground rents, all in the said town of Alexandria. That the personal estate of the said Robert Brockett was not considerable, as she has been informed. Your oratrix further shows to your honors, that the said Robert Brockett, her late husband, was twice married. That by his first marriage he had three children, to wit, Robert Brockett, jun., Walter Brockett, and Margaret Brockett. That the said Walter Brockett died in the life-time of his father, leaving a child, Walter Ann Brockett, now an infant, his sole heir. That the said Margaret Brockett intermarried with a certain ——— Wilson, and departed this life before her father, leaving four children, to wit, Walter Wilson, Thomas Wilson, John Wilson, and George W. Wilson, her heirs, who are all still minors. That the said Robert Brockett by his marriage with your oratrix left three other children, to wit, William Brockett, Annabella Brockett, and Elizabeth Brockett, all still minors, under the age of twenty-one.

Your oratrix further shows, that Robert Brockett, jun., the son of her late husband, by his first marriage, with her consent took letters of administration on the personal estate of his father in the orphans' court of Alexandria, and sold the whole thereof, and has not yet rendered any account thereof satisfactory to your oratrix. That Robert Brockett, jun., has possessed himself of all his father's papers, whether relating to accounts or consisting of muniments of title; and has taken possession of the real estate of which said Robert Brockett, senior, died seized, and so keeps and disposes of the same as to prevent your oratrix from having or using part thereof, except one small tenement belonging to the said Robert Brockett, senior, now in her occupancy. Your oratrix further shows your honors, that among other papers found *in the secretary of* her late husband, a paper purporting to be the last will and testament of Robert Brockett, senior, was found by the administrator, and has been lodged with the register of wills for the county of Alexandria, a true copy whereof is herewith exhibited, and prayed to be taken as a part of this her bill. This paper is a copy of an original wholly written by the said Robert Brockett, sen., of which fact abundant proof can be obtained; and your oratrix is advised, that the original is a good and sufficient will to pass lands, and as such it ought to be established upon the exhibition of full proof that it was wholly written by the said Robert Brockett, senior. Wherefore, your oratrix prays, that if, in the opinion of your honors, the said paper purporting to be the last will and testament of the said Robert Brockett, senior, be a good and sufficient will to pass lands upon the exhibition of the proof aforesaid, that it may be established as the last will and testament of the said Robert Brockett, sen.

But if, in the opinion of your honors, the said paper cannot be considered a will consistently with established authorities, then your oratrix prays that commissioners may be appointed to lay off her dower in the lands and tenements, &c., of which her aforesaid husband died seized; that the said Robert Brockett, junr., may be compelled to settle his administration account on the effects of her said husband, and to pay her whatever from the personal estate she may be entitled to. For which ends your oratrix prays that the said Robert Brockett, junr., Walter Ann Brockett, Walter Wilson, Thomas Wilson, John Wilson and G. W. Wilson, William Brockett, Annabella Brockett, and Elizabeth Brockett, the heirs at law of the said Robert Brockett, senior, deceased, may be made defendants hereto with apt words to charge them, and that they may be compelled to answer the same upon their corporal oaths, as fully and as particularly as if each fact herein set forth were made the subject of a special interrogation; but more especially that the said Robert Brockett, junior, may say of the paper, a copy of which is herewith exhibited, was not found by him in the secretary of his father; if it is not wholly in the handwriting of his said father; and that he may say if he has not taken possession of all the

real estate of which his father died seized; if he has not collected the rents and the ground rents, and if so, how much; upon what houses or lots are the ground rents charged; and out of which lands did the rents issue? And your oratrix prays that the court would make such other and further decree as may be meet and equitable. May it please the court to grant to your oratrix the United States most gracious writ of subpœna, &c., &c.

T. W. HEWITT and T. F. MASON,
Solicitors for complainants.

And at a court continued and held for the District and county aforesaid, the 3d day of December, 1830, came the complainant, by her solicitor; and on her motion the court doth assign Robert Brockett as guardian ad litem, to defend and take care of the interest of the infant defendant Walter Ann Brockett in this cause; and that Alexander Moore be appointed guardian ad litem to defend and take care of the interest of Walter Wilson, Thomas Wilson, John Wilson, and George W. Wilson; and also guardian ad litem to defend and take care of the interests of the infant defendants William Brockett, Annabella Brockett, and Elizabeth Brockett, in this cause.

And at the rules, held in the clerk's office of the said court, for the month of April, 1831, the defendants having been served with the subpœna in this cause, and not appearing to answer the complainant's bill, on her motion the bill is taken for confessed, and set for decree.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 15th day of April, 1831, came the defendant Robert Brockett, by Robert I. Taylor, esqr., his solicitor, and on his motion the order, taken the bill for confessed as to him, is set aside, and he thereupon filed the following plea and answer:

Plea and answer of Robert Brockett.

The separate plea and answer of Robert Brockett, jun'r, to the bill of complaint exhibited against him and others, before the circuit court of the District of Columbia, sitting in chancery at Alexandria, by Elizabeth Brockett:

Plea.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the complainant's bill contained to be true, in such manner and form as the same are therein declared and set forth, for plea to so much of the said bill as seeks an assignment of dower to the complainant in the real estate whereof the said Robert Brockett (this defendant's father) died seized, and as seeks a recovery of any part of the rents and profits of the said estate as appurtenant to her pretended right of dower, or of damages for withholding her said pretended right of dower, and for refusing to make an assignment of dower in the said real estate to the complainant, as the widow of the said Robert Brockett, deceased.

And as to so much of the complainant's bill as seeks a recovery of any part or portion of the personal estate of the said Robert Brockett, deceased, as the pretended distributory share of the complainant, as the widow of the said Robert Brockett, deceased, on the supposition or allegation that the said Robert Brockett departed this life intestate, says that the said complainant never was accoupled to the said Robert Brockett, deceased, in lawful matrimony as she has alleged, which this defendant doth aver and plead in bar of so much of the complainant's demand in her said bill as *are* hereinbefore stated, and for which she seeks to be relieved by her said bill; and this defendant prays to be hence dismissed, with his reasonable costs in this behalf wrongfully sustained.

Answer.

And this defendant, in no sort waiving the matters in the said plea alleged, but relying and insisting on the same, in answer to such of the said bill as he is advised is material for him to answer, to which he answers and says, that he admits that the said Robert Brockett, his father, did die seized of a considerable real estate in the town of Alexandria, of which a schedule is annexed to this answer; but he avers that the said decedent left a very small personal estate, not sufficient for the payment of his debts.

He admits that the said decedent was once married, that is, to this defendant's mother, by whom he had the children stated in the complainant's bill to be the children of his first marriage.

He admits that Walter, one of the said children, died in the lifetime of his father, and left an only child named Walter Ann his heir-at-law, yet under age. He admits that Margaret Brockett, mother of the said children, married one Isaac Wilson, and died before her father, leaving the children in the complainant's bill named, all of whom are yet under the age of twenty-one years. He denies that the complainant ever was lawfully married to the said Robert Brockett. But he admits that they lived many years together, during which time the complainant had the children mentioned in her bill.

He admits that he administered on the personal estate of the said decedent, and took possession thereof, and of his papers, and he is ready at any time to render an account of his administration, and of all the rents and profits of the real estate of which the said decedent died possessed, on which, with the exception of a part held by the complainant, this defendant entered as one of the heirs of the deceased.

He denies that the paper, exhibited by the complainant, was found by him, or any other person, in the scrutoire of the said Robert Brockett; he admits that it was found by the register of wills of the orphans' court, when examining the papers of the said decedent, in the leaves of an old day book found on a shelf, which had been removed by James Carson, with the other papers of the

deceased, after his death, to the Mechanics' Bank for safe-keeping, and from thence to the register's office, without any one knowing or suspecting that any such paper was in the said book.

He admits that the original paper, of which the exhibit purports to be a copy, is all in the handwriting of the said Robert Brockett.

He avers that the orphans' court of the county of Alexandria, having full jurisdiction over the matters, has, by its judgment and decree, refused to admit the said original paper to probate, and has rejected it as the will of the said Robert Brockett; which judgment and decree yet remain in full force and effect, and this defendant relies on the same in bar of all and every claim under the said paper as a will. This defendant denies all combination and concealment, &c., and prays hence to be dismissed with costs, &c.

ROBT. I. TAYLOR,
Sol'r for R. B. jr.

COUNTY OF ALEXANDRIA, *sc:*

This day came Robert Brockett, junior, before the subscriber, a justice of the peace of the county aforesaid, and solemnly made oath in due form of law, that the matters in the foregoing answer stated are true to the best of his knowledge and belief.

Given under my hand this 15th day of April, 1831.

CHARLES CHAPIN,
Justice of the peace.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 22d day of April, 1831, came the parties, by their solicitors, and the answer of Robert Brockett, by agreement, is to stand as the answer of the infant defendant, Walter Ann Brockett, and general replication to plea and answer; and cause set for hearing at next court, with permission to take depositions at any time upon reasonable notice to the adverse party, till the first day of the next term.

Issue ordered to ascertain whether Elizabeth Brockett was lawfully married to Robert Brockett.

And at a court continued and held for the district and county aforesaid, the 2d day of December, 1831, came the parties aforesaid, by their solicitors, and the bill of the complainant and answers of the defendant having *being* filed, and depositions taken, the court doth, by and with the consent of the parties, order an[d] direct that an issue be made up and tried by a jury, to be impannelled and sworn to the bar of this court, to ascertain and say, whether the said Elizabeth Brockett ever was accoupled to the said Robert Brockett, deceased, in lawful matrimony, and further upon the trial of such issue, the depositions of any witnesses heretofore taken, and whose attendance from any cause cannot be had, may be read in evidence.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 5th day of May, 1832, came the parties, by their solicitors, and the order appointing Alexander Moore guardian ad litem to Isaac Wilson's infant children, defendants in this cause, is rescinded, and Isaac Wilson is hereby appointed guardian ad litem to his said children, and continued.

Jury sworn.

And at a court continued and held for the district and county aforesaid, the 9th day of November, 1832, came the parties, by their attornies, and thereupon came a jury, to wit: Robert Anderson, Ezra Lunt, James Bloxham, Samuel Bartle, Timothy Mountford, Thomas Whittle, John Adam, Benjamin Waters, Thomas Jacobs, Thomas Mount, George Drinker, and William H. Miller, who being sworn and affirmed to ascertain whether Elizabeth Brockett was lawfully married to Robert Brockett, deceased, by consent of parties, and with the assent of the court, are continued until to-morrow.

Verdict.

And at a court continued and held for the district and county aforesaid, the 10th day of November, 1832, came the parties, by their solicitors, and the jury heretofore sworn in this case appeared again in court, pursuant to their adjournment, and after hearing the arguments of counsel, and the testimony in the cause, returned the following verdict:

"We of the jury find that Elizabeth Brockett was never legally married to Robert Brockett."

At another day, to wit, at a court continued and held for the district and county aforesaid, the 12th day of November, 1832, came the parties, by their solicitors, and the answers of Alexander Moore and Isaac Wilson, guardians ad litem of the infant defendants in this cause filed, and the cause returned to the rules; which answers are as follows:

Answer of infant defts. by A. Moore, guardian.

A. Moore's answer.

The answer of Alexander Moore, as guardian ad litem for the infant defendants, Walter Wilson, Thomas Wilson, John Wilson, and George W. Wilson, and also as guardian ad litem for the infant defendants, William Brockett, Annabella Brockett and Elizabeth Brockett, in the cause pending in the circuit court of the District of Columbia, and county of Alexandria, in which Elizabeth Brockett is complainant, and Robert Brockett and others, defendants.

This defendant, making all the usual reservations, says, as to so much of the said bill as he is advised that it is material for him to answer, that he believes that the members of the family of Robert

Brockett, sen'r, deceased, are correctly set forth in the complainant's bill, and that a paper was found among the papers of said Robert Brockett, and purporting to be a will, a copy of which is exhibited with the bill; and that the original is in the proper handwriting of said Robert Brockett, sen'r; but whether this paper is to be considered as sufficient to pass real estate, or for any purpose to be considered a will, is respectfully submitted to the decision of the court. This defendant has, since the death of said Robert Brockett, heard that it was denied that he was ever lawfully married to the complainant; but he has always understood and believes that he lived many years with her as his wife, treating her in all respects as such, and that the above named infant defendants, the children of the complainant, were always recognized, educated and treated in all respects by him as his children, and such they claim to be; and it is respectfully submitted to the court to make such order and decree in the premises as may be consistent with equity and justice.

A. MOORE.

Answer of Thomas K. Wilson and others.

Thomas K. Wilson's answer.

The answer of Thomas Knox Wilson, John William Wilson, George W. Wilson and Walter Samuel Wilson, children of Margaret Wilson, late Margaret Brockett, and grand children of Robert Brockett, late of Alexandria, deceased, infants under the age of twenty-one years, by Isaac Wilson, their guardian, assigned to defend this suit, to the bill of complaint exhibited against them on the chancery side of the circuit court of the District of Columbia at Alexandria, by Elizabeth Molin, calling herself Elizabeth Brockett.

These respondents, saving to themselves the benefit of exception to the complainant's bill, in answer to so much thereof as they are advised is material, they answer and say, that they admit that the said Robert Brockett, deceased, was once married, that is to say, to Annabella Burnett, designated in the complainant's bill as his first wife; by whom he had the three children mentioned in the complainant's bill, that is to say, Walter, Robert and Margaret; that the said Walter died leaving issue, one child, named Walter Ann; that she, said Margaret, has departed this life, leaving these respondents her only issue. These respondents deny that the said Robert Brockett, the elder, ever was married to the complainant; and pray to be hence dismissed with costs, &c.

R. I. TAYLOR, *Solicitor for defendant.*

Sworn to in court, this 12th Nov'r, 1832.

CASSIUS F. LEE, *D'y clerk.*

Suit dismissed.

And at the rules held in the clerk's office of the said court, for the month of September, 1833, (until which time this cause had been regularly continued,) came the parties, by their solicitors, and this cause is dismissed.

Depositions.—Depositions.

The deposition of Hezekiah Peacock, of lawful age, taken this 3d day of April, 1832, at the house of said Peacock, in the county of Fairfax, and State of Virginia, to be read as evidence on the trial of a suit depending in the United States circuit court for the District of Columbia, for the county of Alexandria, between Elizabeth Brockett and Robert Brockett and others, and according to the commission and notice hereto annexed, the deponent being first sworn.

Question by defendants. Where did you reside in the year 1814? Say from the month of April to the month of November.

Answer. In the year 1814, I resided at the Old Court-house run, from early in April until the end of that year, but was absent from home from some time in August until September, when I remained at home only four days, and was then absent until December following.

Question by same. Did you, during the period aforesaid, keep a tavern or house of private entertainment?

Answer. I kept a tavern.

Question by same. Was there any marriage celebrated in your house during that time; and if so, who were the parties married?

Answer. No persons were married in my house during that time to my knowledge.

Question by same. Were you acquainted with Robert Brockett, sen'r, late of Alexandria? Was he ever at your house; if so, was he ever there in company with any female not of your own family; and was he ever married at your house, either in 1814, or at any other time?

Answer. In the year 1814 I was not acquainted with Robert Brockett, sen'r, but have since then seen him, though never at my house, nor have I ever heard that he was at my house.

Question by same. Did you ever hear of *of* any marriage being celebrated between the said Robert Brockett, the elder, and Elizabeth Moland or Moreland?

Answer. I never did.

Question by same. At what distance were the nearest public houses to the house occupied by you?

Answer. The nearest public house to the house occupied by me was two and an half miles distant.

And further the deponent saith not.

HEZEKIAH PEACOCK.

Mary Peacock's deposition.

The deposition of Mary Peacock, taken at the same time and place mentioned in the preamble to the deposition of Hezekiah Peacock, to be read as evidence in the same suit. The deponent being first sworn :

Question by defendants. Where did you reside in the year 1814? say from the month of April to the month of November.

Answer. At the Old Court-house run.

Question by same. *Was* you absent from home during any part of that time ; and if so, how long ?

Answer. I had a parcel of small children to attend to during that time, and do not think I was absent from home two hours at any time.

Question by same. Did you, during that time, keep a tavern or a house of private entertainment ?

Answer. I kept a tavern.

Question by same. Was there any marriage celebrated in your house during the period aforesaid ; and if so, who were the parties married ?

Answer. No persons were married at my house during that period.

Question by same. Were you acquainted with Robert Brockett, senior, late of Alexandria ; was he ever at your house; if so, was he ever there in company with any female not of your own family ; and was he ever married at your house, either in 1814, or at any other time ?

Answer. I was not acquainted with Robert Brockett, sen'r. He never was at my house that I know, nor was he or any other person married there in 1814, or at any other time, that I know of.

Question by same. Did you ever hear of any marriage being celebrated between the said Robert Brockett, the elder, and Elizabeth Moland or Moreland ?

Answer. I never did.

Question by same. At what distance were the nearest public houses to the house occupied by you ?

Answer. The nearest public houses were John Vallandinghams and Wm. Wiley's, which were about three miles off.

And further the deponent saith not.

MARY her X mark PEACOCK.

STATE OF VIRGINIA, *Fairfax county, sct:*

The foregoing depositions of Hezekiah Peacock and Mary Peacock, his wife, were taken and subscribed to (they being first sworn) before us, the undersigned, two of the justices of the peace for said county, at the house of said Hezekiah Peacock, in the county aforesaid, this 3d day of April, 1832, between the hours of 12 o'clock at noon, and three o'clock in the afternoon, and according to the commission and notice hereto annexed.

Given under our hands, this 3d day of April, 1832.

E. OFFUTT, [SEAL.]
MOTTROM BALL. [SEAL.]

The deposition of the Reverend Elias Harrison, John Lawson, and Christopher Neale, esqr., taken at the office of Adam Lynn, in Alexandria, on the 24th day of September, 1831, at 3 o'clock, P. M., in pursuance of the annexed commission and notice, to be read in evidence in a certain matter now depending in the circuit court of the District of Columbia, on the chancery side thereof, in which Elizabeth Brockett is complainant, and Robert Brockett and others are defendants; counsel for both parties being present, and consenting to the said depositions being taken before one justice.

Deposition of E. Harrison.

The Rev'd Elias Harrison, being first duly cautioned and sworn, deposes and says as follows:

Question 1st. Were you acquainted with Robert Brockett, senior, during his life time; and were you in the habit of visiting in his house; and was he a member of your congregation?

Answer 1. I was acquainted with Robert Brockett, senior, during his life time. I was in the habit of occasionally visiting in his family, and took it for granted that the woman with whom he was then living was his wife. He was a pew-holder in my congregation, but rarely at church.

Cross interrogatories for deft. R. Brockett.

Question 1st. How long did you know Mr. R. Brockett prior to his death; and what were your habits of acquaintance with him?

Answer 1st. I knew Robert Brockett, senior, ten or twelve years before his death, and being a pew-holder in my church, I was in the habit of occasionally visiting in his family, though my intercourse was not so frequent as to have conversation with him probably more than four or five times during the year.

Question 2d. You state that you "took it for granted that the woman with whom he (Robert Brockett, senr.) was living was his wife." State your reasons.

My reason is, that I never heard any thing directly the contrary, and always understood that they lived together as man and wife—never having heard, to the best of my recollection, that they were or were not.

Question 3d. When you visited the house of R. Brockett, did you generally see Mr. Brockett and the complainant Elizabeth together?

Answer. To the best of my recollection, very rarely.

Question by plaintiff No. 2. Do you know Mrs. Elizabeth Brockett, the second wife of Robert Brockett; and did the said R. Brockett and Elizabeth Brockett live harmoniously together during the whole period of your acquaintance with said Robert Brockett?

Answer. So far as I know, the person in the question called Mrs. Elizabeth Brockett, is the same woman who lived with Robert Brockett, as his wife, during the whole of my intercourse and ac-

quaintance with him; and as to the harmony in which they lived, I know nothing certainly.

And further deponent saith not.

ELIAS HARRISON.

John Lawson's deposition.

John Lawson, being first duly cautioned and sworn, deposes as follows:

Question 1st. Were you acquainted with Robert Brockett, senior; and for what period; and did you visit his house after his second marriage?

Answer 1st. I became acquainted with Robert Brockett in the year 1819, and was in the habit of visiting his house frequently until his death; that upon my first visit, Robert Brockett introduced the complainant in this cause as his wife, and I never heard that she was not his wife until after his death.

Question 2d. Are you acquainted with the plaintiff; and do you know how many children the plaintiff had by the said Robert Brockett, and their names, and how he educated them?

Answer. My acquaintance with the plaintiff commenced shortly after that with the said Robert Brockett. She has three children, and that he sent them to school as soon as their age would permit.

Question 3d. Did the said Brockett and his wife Elizabeth live harmoniously together?

Answer 3d. I do not know that they did live very harmoniously together, for when I have been there I have heard him speak very sharply to her.

Cross examined.

1st. At what time were you first introduced to the complainant by Robert Brockett?

Answer. From 9 to 12 months after my acquaintance with Robert Brockett commenced.

Question 2d. State in what manner R. Brockett introduced to you the complainant, when you first saw her?

Answer. The first time I went to the house of Robert Brockett, he introduced the plaintiff as Mrs. Brockett.

Question 3d. What was the general report as to the marriage of Robert Brockett with the complainant, during the life of the said Robert?

Answer. I have heard it said that they were not married, and I afterwards heard that they were married.

Question 4. Did you ever hear any person say to Robert Brockett, senr., or in his presence, that he was not married to the complainant; and what reply, if any, did he make.

Answer. I never did hear any person say so in his presence, so far as I can now recollect.

5th. What was your acquaintance with the complainant, and did

she generally appear in the room with Mr. Brockett and his company, when you were at his house?

Answer. My acquaintance with her was very slight, and she seldom made her appearance in company.

Was it or not the report that, during some part of the connexion between Robert Brockett and the complainant, that the complainant had then a husband living?

Answer. I have heard such a report, but I do not recollect the name of the reported husband. And further deponent saith not.

JOHN LAWSON.

The defendants' counsel excepts to the plaintiff's 2d question to Elias Harrison, and to the 3d question to John Lawson, as being leading questions, and requires the same to be certified.

By consent of parties this commission is adjourned to Monday next, 3 o'clock in the afternoon.

ADAM LYNN.

Deposition of C. Neale.

The deposition of Christopher Neale, esq'r, being first duly cautioned and sworn:

Question 1st. Were you acquainted with Robert Brockett, sen'r, during his lifetime; and were you in the habit of visiting in his house?

Answer. I was acquainted with him from 1812 until his death, and was occasionally at his house during that period.

Question 2d. When you were occasionally at his house, were you introduced to his wife?

Answer. I saw a lady there, who is the complainant in this cause. I was not introduced to her by any one as the wife of Mr. Brockett, but I presumed she was. I never heard a word upon the subject until after the death of Mr. Brockett, senior, consequently had no knowledge touching this matter. I was surprised when I understood that she was not his wife. He once called her Mrs. Brockett in the presence of this deponent.

Cross examined by R. Brockett's counsel.

1st. State what were your habits of visiting in the family of Robert Brockett, and whether your visits were those of friendship, acquaintance, or business?

Answer. I was there on business, and I visited him in his sickness in friendship. [I think in his sickness before the last.] I have occasionally been at his house when he was in health.

2d. When you visited Mr. Brockett in his sickness, did you see the complainant in this case? If so, were you introduced to her as the wife of Robert Brockett, sen'r?

Answer. I saw her, but was not introduced to her as his wife, or in any way.

3d. State what reasons you had for supposing the complainant was the wife of Robert Brockett, senior.

Answer. Because she was always at his house when I was there; and from the manner in which Mr. Brockett treated her, it forbid, on my part, the idea of her being a servant; from which I inferred that she was his wife.

Question by complainant. Have you not stated that, when you were at Mr. Brockett's, "he always treated the complainant as his wife?"

Answer. Yes; from his manner of treating her, which was familiar and kind, I inferred it, as above stated.

And further this deponent saith not.

CHR. NEALE.

Fee for taking these depositions $4.

DISTRICT OF COLUMBIA,
County of Alexandria, to wit:

I, Adam Lynn, a justice of the peace for the county aforesaid, do certify that, at my office in the town of Alexandria, on the 24th day of September, 1831, at 3 o'clock, I took the foregoing depositions of the reverend Elias Harrison and John Lawson; and on the 26th day of the same month, to which time the parties adjourned, I also took the foregoing deposition of Chr. Neale, esq'r, according to the caption thereof, exceptions having been taken by the defendant as above noted.

Given under my hand and seal, this 27th day of September, 1831.

ADAM LYNN. [SEAL.]

Certificate of William Moss.

Exhibits.

THE COMMONWEALTH OF VIRGINIA, *to wit:*

I, William Moss, clerk of the county court of Fairfax, in the commonwealth aforesaid, do hereby certify, that I have carefully examined the files of my office, from April, 1810, until this time, and it does not appear that any license ever was issued from my office for a marriage between Robert Brockett, or any one of that name, and any other person; and in like manner I have carefully examined the returns of the ministry authorised to celebrate the rites of matrimony, and the book of registry of marriages in my office, and it does not appear that any return of a marriage between any person of the name of Robert Brockett, and any other person, was ever made to my said office; and I do further certify, that I [was] well acquainted with Robert Brockett, late of Alexandria, and never heard of his having been married in the county of Fairfax.

Given under my hand, this 30th day of April, 1832.

WM. MOSS,
Clerk of Fairfax.

R. Jones' certificate.

It appears from a descriptive roll of Captain Lewis B. Willis's company, of the late 12th regiment of infantry, dated 16th February, 1815, that private James Molen was enlisted 3d September, 1812, for five years, by Captain John Stannard, at Fairfax county, Virginia. Description of said James Molen: five feet ten inches high, aged thirty years, grey eyes, dark hair, ruddy complexion, and by occupation a carpenter; born in Fairfax county, Virginia.

It also further appears from the semmi-annual muster roll of Captain Willis Foulk's company E, of the eight[h] regiment of infantry, from the 30th of June to the 31st of December, 1817, that the said James Molen was enlisted 3d September, 1812, for five years, and "discharged 3d September, 1817, at Fort Clairborne, by order of Captain Foulk, expiration of service."

Given at the adjutant general's office, War Department, Washington, this fourth day of May, 1832.

R. JONES, *Adj't Gen'l.*

For Mr. BROCKETT, *Alexandria.*

Land warrant.

Andrew Jackson, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in pursuance of the acts of Congress appropriating and granting land to the late army of the United States, passed on and since the 6th day of May, 1812, Jane Eliza Bailey, daughter, and the other heirs at law of James Molin, having deposited in the General Land Office a warrant in their favour, numbered 26,380, there is granted unto the said Jane Eliza Bailey, daughter, and the other heirs at law of James Molin, late a private of Foulk's company of the eighth regiment of infantry, and to their heirs, a certain tract of land containing one hundred and sixty acres, being the southeast quarter of section one, of township eleven north, in range four west, in the tract appropriated (by the acts aforesaid) for military bounties in the Territory of Arkansas; to have and to hold the said quarter section of land, with the appurtenances thereof, unto the said Jane Eliza Bailey, daughter, and the other heirs at law of James Molin, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, this thirtieth day of April, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty-fifth.

By the President: ANDREW JACKSON.

JOHN M. MOORE,

Acting Commissioner of the General Land Office.

Recorded vol. 11, page 362—examined.

[REC. LXXI, D. T. 1844.]—17

GENERAL LAND OFFICE, *November* 3, 1832.

I hereby certify, that the within is a true copy of the patent on record in this office.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

ELIJAH HAYWOOD, *Commissioner.*

Appeal bond.

Know all men by these presents, that we, Robert Brockett, William Ball, Thomas R. Wilson, and Thomas E. Baird, Edgar Snowden, and R. L. Brockett, are held and firmly bound unto William Brockett, Annabella Brockett, and Elizabeth Brockett, the younger, in the full and just sum of ten thousand dollars, to which payment well and truly to be made, we bind ourselves and our heirs, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 15th day of June, 1843.

Whereas the circuit court of the District of Columbia, for the county of Alexandria, on the 10th day of May, 1843, decreed and ordered, in a suit in which the said William Brockett, Annabella Brockett, and Elizabeth Brockett, jun., are complainants, and Robert Brockett and others, are defendants; that the complainants are the legitimate children and heirs at law of Robert Brockett, deceased, as charged by them in their bill of complaint in common with Robert Brockett, jun., son of said deceased, Mary Elizabeth Ball, and William W. Ball, only children and heirs of Walter Ann Brockett, deceased, wife of William Ball, and daughter of said deceased Robert, and Thomas R. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, children and heirs of Margaret Brockett, deceased, wife of said Wilson, deceased, and daughter of said deceased Robert, and that as such legal heirs and children, the said complainants are entitled to receive each per sterpes the one-sixth part of the deceased Robert Brockett's estate, both real, mixed, and personal, and that they were so entitled at the time of the death of the said Robert. It was also further ordered and decreed upon the day aforesaid, that the report made to the court by the commissioners appointed to value and divide the real estate of said deceased Robert, and the divisions in manner and form as made by them, as well as the report made to this court by the master commissioner, Reuben Johnston, be, and the same was received, approved, ratified, and confirmed; and that partition of said real estate be made between the complainants and defendants according to said commissioner's report; and that the said William Brockett, Elizabeth Brockett, and Annabella Brockett, the complainants, do forever thereafter hold and possess the several claims and dividends of the said real estate to them assigned according to the report of the said commissioners filed in the cause; that is to say, the said com-

plainants, their heirs and assigns forever, one-sixth part each in severalty, or parcenary, as the same is described in the said commissioner's report, and the said Robert Brockett, jun., the said Mary Elizabeth Ball and William W. Ball, the infant heirs of the said deceased Walter Ann Brockett, and the said Thomas R. Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, heirs and children of said deceased Margaret Brockett, the defendants, do also forever hereafter hold the several shares and dividends to them assigned upon the terms and conditions, and according to the said commissioner's report, in severalty, or in parcenary, as the same is described in the said report. And it was further ordered and decreed, that the complainants and assigns, do recover from the said defendants the following sums of money in manner and form hereafter specified, and in conformity with the report of the master commissioner aforesaid; that is to say, that the said Robert Brockett, jun., shall pay unto the complainants within four months from the 10th day of May, 1843, the sum of $3,344 20, with interest from that time, being the balance due to the complainants, after deducting the sum of $663\frac{75}{100}$ from the reported sum of $4,007\frac{95}{100}$ stated in the said last mentioned report, and which sum so deducted was claimed by said Robert as an additional allowance to be made to him. And that the said Mary Elizabeth Ball and William W. Ball, shall pay unto the complainants within the same time, the sum of $481\frac{90}{100}$ in conformity with the said master commissioner's report, with interest from that date, and that the said Thomas Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, shall pay to the said complainants within the said time, the sum of $1,386 53, in conformity with the said last mentioned report, with interest from that date. And whereas on the 9th day of June, 1843, the said court, on the motion of the defendants to open said decree, and refer back the report to the master commissioner with instructions to allow certain credits claimed by the defendants, did overrule said motion, from which refusal, order, and decree, as well as the decree made on the 10th of May last, the defendants appealed to the Supreme Court.

Now, the condition of the above obligation is such, that if the said Robert Brockett, Mary Elizabeth Ball, William W. Ball, Thomas Wilson, John W. Wilson, George W. Wilson, and Walter S. Wilson, shall prosecute their said appeal to effect, and answer all damages and cost, in case they shall fail therein, then the above obligation to be void, otherwise to remain in full force and virtue in law.

ROBERT BROCKETT, [SEAL.]
WILLIAM BALL, [SEAL.]
THOMAS K. WILSON, [SEAL.]
THOMAS E. BAIRD, [SEAL.]
EDGAR SNOWDEN, [SEAL.]
R. L. BROCKETT, [SEAL.]

Sealed and delivered in presence of—
CASSIUS F. LEE, as to R. B., W. B., T. E. B., and E. S.

Approved, W. CRANCH.
June 20, 1843.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

I, Cassius F. Lee, clerk of the United States circuit court of the District of Columbia, for Alexandria county, hereby certify that the foregoing is a true transcript of the record of the proceedings in a suit lately depending in said court, in which William Brockett and others were plaintiffs, and Robert Brockett and others were defendants.

[SEAL.] In testimony whereof, I hereto set my hand and affix the seal of the said court, this 29th day of October, 1843.

CASSIUS F. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit:*

To William Brockett, Annabella Brockett and Elizabeth Brockett, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the National Government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of the District of Columbia, for the county of Alexandria, wherein Robert Brockett and others are plaintiffs, and William Brockett and others are defendants, to show cause, if any there be, why the judgment rendered against the said Robert Brockett and others, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this third day of October, 1843.

JAMES S. MORSELL, *Ass. Judge, &c., &c.*

I acknowledge service of this citation.

WM. BRENT, *for defendants in error.*

18th Oct., 1843.

UNITED STATES OF AMERICA, *District of Columbia:*

The President of the United States of America, to the judges of [SEAL.] the United States circuit court of the district of Columbia, greeting:

Because in the record and proceedings, and also in the rendering of the [judgment] of a plea which is in the said court for the county of Alexandria, before you, or some of you, between William Brockett and others, and Robert Brockett and others, in an

issue from chancery, manifest error hath happened, to the great damage of the said Robert Brockett and others, as by their complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, being the present seat of the National Government, on the first Monday in January next, that the record and proceedings aforesaid [having] been seen and inspected, the said Supreme Court may cause further to be done therein, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice [of the Supreme Court] of the United States, this 3d day of October, eighteen hundred and forty-three.

CASSIUS F. LEE, *Cl'k.*

Filed, 1846.